

# OFFICIAL CODE OF GEORGIA ANNOTATED

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## 2015 Supplement

Including Acts of the 2015 Regular Session of the General Assembly

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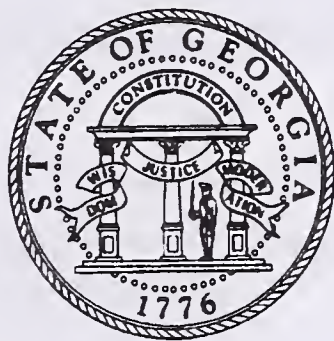
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*and*

The Editorial Staff of LexisNexis®



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## Volume 38A

### 2013 Edition

Title 50. State Government

Chapters 13-38

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Including Annotations to the Georgia Reports  
and the Georgia Appeals Reports

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**Place in Pocket of Corresponding Volume of  
Main Set**

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## **THIS SUPPLEMENT CONTAINS**

### **Statutes:**

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

### **Annotations of Judicial Decisions:**

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

### **Annotations of Attorney General Opinions:**

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

### **Other Annotations:**

References to:

Emory Bankruptcy Developments Journal.  
Emory International Law Review.  
Emory Law Journal.  
Georgia Journal of International and Comparative Law.  
Georgia Law Review.  
Georgia State University Law Review.  
John Marshall Law Review.  
Mercer Law Review.  
Georgia State Bar Journal.  
Georgia Journal of Intellectual Property Law.  
American Jurisprudence, Second Edition.  
American Jurisprudence, Pleading and Practice.  
American Jurisprudence, Proof of Facts.  
American Jurisprudence, Trials.  
Corpus Juris Secundum.  
Uniform Laws Annotated.  
American Law Reports, First through Sixth Series.  
American Law Reports, Federal.

### **Tables:**

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.



**Indices:**

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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**TITLE 50**  
**STATE GOVERNMENT**

**VOLUME 38**

Chap.

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50-13-9.1. Variances or waivers to rules.

Sec.  
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ARTICLE 1  
GENERAL PROVISIONS

50-13-1. Short title; purpose.

JUDICIAL DECISIONS

**Reversing agency decision on ground not raised before agency.** — In a proceeding wherein a trial court affirmatively granted a peace officer’s reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial

review or at the hearing on the petition. *Ga. Peace Officer Standards and Training Council v. Hodges*, 330 Ga. App. 145, 767 S.E.2d 286 (2014).  
**Cited** in *Scarborough v. Hunter*, 293 Ga. 431, 746 S.E.2d 119 (2013); *DeKalb County Sch. Dist. v. Ga. State Bd. of Educ.*, 294 Ga. 349, 751 S.E.2d 827 (2013).

50-13-2. Definitions.

As used in this chapter, the term:

(1) “Agency” means each state board, bureau, commission, department, activity, or officer authorized by law expressly to make rules and regulations or to determine contested cases, except the General Assembly; the judiciary; the Governor; the State Board of Pardons and Paroles; the State Financing and Investment Commission; the State Properties Commission; the Board of Bar Examiners; the Board of Corrections and its penal institutions; the State Board of Workers’ Compensation; all public authorities except as otherwise expressly provided by law; the State Personnel Board; the Department of Administrative Services or commissioner of administrative services; the Technical College System of Georgia; the Nonpublic Postsecondary Education Commission; the Department of Labor when conducting hearings related to unemployment benefits or overpayments of unemployment benefits; the Department of Revenue when conducting hearings relating to alcoholic beverages, tobacco, or bona fide coin operated amusement machines or any violations relating thereto; the Georgia Tobacco Community Development Board; the Georgia Higher Education Savings Plan; any school, college, hospital, or other



such educational, eleemosynary, or charitable institution; or any agency when its action is concerned with the military or naval affairs of this state. The term “agency” shall include the State Board of Education and Department of Education, subject to the following qualifications:

(A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid rules adopted by the State Board of Education and Department of Education prior to January 1, 1990, are ratified and validated and shall be effective until January 1, 1991, whether or not such rules were adopted in compliance with the requirements of this chapter; and

(B) Effective January 1, 1991, any rule of the State Board of Education or Department of Education which has not been proposed, submitted, and adopted in accordance with the requirements of this chapter shall be void and of no effect.

(2) “Contested case” means a proceeding, including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(2.1) “Electronic” means, without limitation, analog, digital, electronic, magnetic, mechanical, optical, chemical, electromagnetic, electromechanical, electrochemical, or other similar means.

(3) “License” means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(3.1) “Mailed” includes electronic means of communication.

(3.2) “Mailing list” includes electronic means of distribution.

(4) “Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

(5) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(5.1) “Record” means information created, transmitted, received, or stored either in human perceivable form or in a form that is retrievable in human perceivable form.

(6) “Rule” means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law



or policy or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(B) Declaratory rulings issued pursuant to Code Section 50-13-11;

(C) Intra-agency memoranda;

(D) Statements of policy or interpretations that are made in the decision of a contested case;

(E) Rules concerning the use or creation of public roads or facilities, which rules are communicated to the public by use of signs or symbols;

(F) Rules which relate to the acquiring, sale, development, and management of the property, both real and personal, of the state or of an agency;

(G) Rules which relate to contracts for the purchases and sales of goods and services by the state or of an agency;

(H) Rules which relate to the employment, compensation, tenure, terms, retirement, or regulation of the employees of the state or of an agency;

(I) Rules relating to loans, grants, and benefits by the state or of an agency; or

(J) The approval or prescription for the future of rates or prices. (Ga. L. 1964, p. 338, § 2; Ga. L. 1965, p. 283, §§ 2-4; Ga. L. 1975, p. 404, § 3; Ga. L. 1980, p. 1573, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 1463, §§ 6, 13; Ga. L. 1985, p. 283, § 1; Ga. L. 1990, p. 794, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 404, § 1; Ga. L. 1997, p. 695, § 1; Ga. L. 1999, p. 721, § 2; Ga. L. 2000, p. 1619, § 1; Ga. L. 2001, p. 76, § 4; Ga. L. 2005, p. 175, § 3/HB 98; Ga. L. 2008, p. 335, § 10/SB 435; Ga. L. 2010, p. 470, § 8/SB 454; Ga. L. 2012, p. 446, § 2-105/HB 642; Ga. L. 2012, p. 831, § 14/HB 1071; Ga. L. 2014, p. 730, § 10/HB 714; Ga. L. 2015, p. 83, § 10/HB 353.)

**The 2014 amendment**, effective April 24, 2014, inserted “the Department of Labor when conducting hearings related to unemployment benefits or overpay-

ments of unemployment benefits;” in the middle of the first sentence of paragraph (1).

**The 2015 amendment**, effective July



1, 2015, inserted “the Nonpublic Postsecondary Education Commission,” in the introductory language of paragraph (1).

**Law reviews.** — For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 137 (2014).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

##### General Consideration

Cited in *Scarborough v. Hunter*, 293 Ga. 431, 746 S.E.2d 119 (2013).

#### **50-13-4. Procedural requirements for adoption, amendment, or repeal of rules; emergency rules; limitation on action to contest rule; legislative override.**

## JUDICIAL DECISIONS

Cited in *Olvera v. Univ. Sys. of Georgia's Bd. of Regents*, 331 Ga. App. 392, 771 S.E.2d 91 (2015).

#### **50-13-9.1. Variances or waivers to rules.**

(a) The General Assembly finds and declares that the strict application of rules can lead to unreasonable, uneconomical, and unintended results in particular instances. The General Assembly further declares that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.

(b) As used in this Code section, the term:

(1) “Substantial hardship” means a significant, unique, and demonstrable economic, technological, legal, or other type of hardship to the person requesting a variance or waiver which impairs the ability of the person to continue to function in the regulated practice or business.

(2) “Variance” means a decision by an agency to grant a modification to all or part of the literal requirements of a rule to a person who is subject to the rule.

(3) “Waiver” means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.

(c) Except as provided in subsection (h) of this Code section, an agency is authorized to grant a variance or waiver to a rule when a person subject to that rule demonstrates that the purpose of the underlying statute upon which the rule is based can be or has been achieved by other specific means which are agreeable to the person



seeking the variance or waiver and that strict application of the rule would create a substantial hardship to such person. A register of all pending requests for variances and waivers and all approved variances and waivers shall be maintained by the department granting the waiver or variance and shall be updated upon each grant of waiver or variance and be made available, upon request, to members of the public. The register and each entry on the register shall be posted on the GeorgiaNet. Any member of the public, including interested parties, shall have the opportunity to submit written comments concerning proposed variances or waivers prior to the approval of a variance or waiver pursuant to this Code section.

(d) Except as provided in subsection (h) of this Code section, a person who is subject to regulation by an agency rule may file a petition with that agency requesting a variance or waiver from the agency's rule. In addition to any other requirements which may be imposed by the agency, each petition shall specify:

- (1) The rule from which a variance or waiver is requested;
- (2) The type of action requested;

(3) The specific facts of substantial hardship which would justify a variance or waiver for the petitioner, including the alternative standards which the person seeking the variance or waiver agrees to meet and a showing that such alternative standards will afford adequate protection for the public health, safety, and welfare; and

(4) The reason why the variance or waiver requested would serve the purpose of the underlying statute.

(e) The agency subject to the provisions of subsections (c) and (d) of this Code section shall grant or deny a petition for variance or waiver in writing no earlier than 15 days after the posting of the petition on the register and no more than 60 days after the receipt of the petition. The agency's decision to grant or deny the petition shall be in writing and shall contain a statement of the relevant facts and the reasons supporting the agency's action.

(f) The agency's decision to deny a petition for variance or waiver shall be subject to judicial review in accordance with Code Section 50-13-19. The validity of any variance or waiver which is granted by an agency may be determined in an action for declaratory judgment in accordance with Code Section 50-13-10.

(g) Nothing in this Code section shall authorize an agency to grant variances or waivers to any statutes or to the agency itself or any other agency. This Code section does not supersede and is cumulative of any other variance or waiver provisions in other statutes or rules.



(h) This Code section shall not apply, and no variance or waiver shall be sought or authorized, when:

(1) Any agency rule or regulation has been adopted or promulgated in order to implement or promote a federally delegated program;

(2) Any rule or regulation is promulgated or adopted by the Department of Corrections concerning any institutional operations or inmate activities;

(3) Any rule or regulation is promulgated or adopted by the Department of Community Health;

(4) Any rule or regulation is promulgated or adopted by the Department of Agriculture;

(5) Any rules, regulations, standards, or procedures are adopted or promulgated by the Department of Natural Resources for the protection of the natural resources, environment, or vital areas of this state; or

(6) The granting of a waiver or variance would be harmful to the public health, safety, or welfare.

(i) All waivers granted pursuant to this Code section shall be reported to the General Assembly within the first ten days of the next session. Such information shall contain the name, address, and telephone number of the person or corporation obtaining such waiver; the name, address, and telephone number of any representative or attorney who represented such person or corporation requesting the waiver; and a description of the waiver granted including a detail of the variance from any rule or regulation. (Code 1981, § 50-13-9.1, enacted by Ga. L. 1997, p. 1521, § 2; Ga. L. 1998, p. 128, § 50; Ga. L. 1999, p. 296, § 22; Ga. L. 2015, p. 207, § 8/HB 71.)

**The 2015 amendment**, effective July 1, 2015, in subsection (h), deleted former paragraph (3), which read: “Any rule or regulation is promulgated or adopted by the State Board of Pardons and Paroles

regarding clemency considerations and actions;” and redesignated former paragraphs (4) through (7) as present paragraphs (3) through (6), respectively.

## **50-13-10. Declaratory judgment on validity of rules; venue for actions.**

### **JUDICIAL DECISIONS**

#### **Application of sovereign immunity.**

Trial court did not err in finding that sovereign immunity barred the declaratory action because the court correctly treated the policies of the board of regents regarding non-citizen eligibility for

in-state tuition as falling outside the waiver of sovereign immunity found in O.C.G.A. § 50-13-10, thus, the students did not meet the students’ burden of showing that the policies at issue were agency rules adopted pursuant § 50-13-10’s



waiver, rather than interpretive rules exempt from § 50-13-10. *Olvera v. Univ. Sys. of Georgia's Bd. of Regents*, 331 Ga. App. 392, 771 S.E.2d 91 (2015).

**Cited** in *SJN Props., LLC v. Fulton County Bd. of Assessors*, 296 Ga. 793, 770 S.E.2d 832 (2015).

**50-13-13. Opportunity for hearing in contested cases; notice; counsel; subpoenas; record; enforcement powers; revenue cases.**

JUDICIAL DECISIONS

**Reversing agency decision on ground not raised before agency.** — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. *Ga. Peace Officer Standards and Training Council v. Hodges*, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

**Notice of reduction of providers' reimbursement.** — Under the Georgia Medical Assistance Act of 1977, O.C.G.A. § 49-4-140, et seq. (including O.C.G.A.

§ 49-4-153(b)(1), (b)(2)(A)), the regulations, and the policy and procedure manuals, health care providers were entitled to written notification from the Georgia Department of Behavioral Health and Developmental Disabilities and the Georgia Department of Community Health of the proposed action to deny or reduce the amount of the providers' reimbursement. *United Cerebral Palsy of Ga. v. Ga. Dep't of Behavioral Health & Developmental Disabilities*, 331 Ga. App. 616, 771 S.E.2d 251 (2015).

**Cited** in *DeKalb County Sch. Dist. v. Ga. State Bd. of Educ.*, 294 Ga. 349, 751 S.E.2d 827 (2013).

**50-13-17. Initial decisions in contested cases; review of initial decisions; final decisions and orders; Public Service Commission exceptions.**

JUDICIAL DECISIONS

**Reversing agency decision on ground not raised before agency.** — In a proceeding wherein a trial court affirmatively granted a peace officer's reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were

never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. *Ga. Peace Officer Standards and Training Council v. Hodges*, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

**50-13-19. Judicial review of contested cases.**

**Law reviews.** — For annual survey on administrative law, see 65 Mercer L. Rev. 41 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION



PREREQUISITES TO JUDICIAL REVIEW

General Consideration

**Reversing agency decision on ground not raised before agency.** — In a proceeding wherein a trial court affirmatively granted a peace officer’s reinstatement, the court held that the trial court erred by reversing the decision of the council based on grounds that were never urged before the trial court and that were not raised in the petition for judicial review or at the hearing on the petition. *Ga. Peace Officer Standards and Training Council v. Hodges*, 330 Ga. App. 145, 767 S.E.2d 286 (2014).

**Unemployment benefits cases.** — Venue for an employee’s petition for judicial review from a denial of unemployment benefits lay in Fulton County pursuant to O.C.G.A. § 34-8-223(b); although the employee last worked in Laurens County pursuant to a subcontract, the employee’s contractual employer was a staffing firm with the firm’s principal place of business in Fulton. This provision, rather than O.C.G.A. § 50-13-19, applied to the employee’s situation. *Fed v.*

*Butler*, 327 Ga. App. 637, 760 S.E.2d 642 (2014).

**Cited** in *Scarborough v. Hunter*, 293 Ga. 431, 746 S.E.2d 119 (2013); *Barnett v. Ga. Dep’t of Labor*, 323 Ga. App. 882, 748 S.E.2d 688 (2013); *DeKalb County Sch. Dist. v. Ga. State Bd. of Educ.*, 294 Ga. 349, 751 S.E.2d 827 (2013).

Prerequisites to Judicial Review

**Exhaustion of remedies necessary for judicial review.**

Trial court properly upheld an agency decision that a power company had the right to continue service to an apartment complex under the grandfather clause to the Georgia Territorial Electric Service Act, O.C.G.A. § 46-3-8(b), after individual meters were installed to replace one master meter because none of the exceptions to the grandfather clause existed and the challenging electric corporation failed to raise its challenge to the application of the grandfather clause before the agency. *Excelsior Elec. Mbrshp. Corp. v. Ga. PSC*, 322 Ga. App. 687, 745 S.E.2d 870 (2013).

50-13-20. Review of final judgment.

JUDICIAL DECISIONS

**Cited** in *DeKalb County Sch. Dist. v. Ga. State Bd. of Educ.*, 294 Ga. 349, 751 S.E.2d 827 (2013).

ARTICLE 2

OFFICE OF STATE ADMINISTRATIVE HEARINGS

50-13-40. Office created; chief state administrative law judge.

JUDICIAL DECISIONS

**Cited** in *Ctr. for a Sustainable Coast, Inc. v. Turner*, 324 Ga. App. 762, 751 S.E.2d 555 (2013); *Southern States-Bartow County, Inc. v. Riverwood Farm Prop. Own-*

*ers Ass’n, Inc.*, 769 S.E.2d 823, No. A14A1562, 2015 Ga. App. LEXIS 190 (2015).



50-13-42. Applicability of article.

JUDICIAL DECISIONS

Cited in *Babies Right Start v. Ga. Dep’t of Pub. Health*, 293 Ga. 553, 748 S.E.2d 404 (2013).

50-13-44. Administrative transfer of individuals to Office of State Administrative Hearings; approval of chief state administrative law judge; funding of transferred positions; transferred employees status.

JUDICIAL DECISIONS

Cited in *Scarborough v. Hunter*, 293 Ga. 431, 746 S.E.2d 119 (2013).

CHAPTER 14

OPEN AND PUBLIC MEETINGS

Editor’s notes. — “This chapter, added by Ga. L. 1988, p. 235, § 1, is commonly referred to as the ‘Open Meeting Law’ or ‘Open Meeting Act,’ although those names are not official.”

50-14-1. Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; telecommunications conferences.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION  
APPLICATION

General Consideration

Cited in *City of Baldwin v. Woodard & Curran, Inc.*, 293 Ga. 19, 743 S.E.2d 381 (2013).

Application

Letter from single county commissioner was not a decision. — Letter from a county to a developer advising that proposals would be considered under an

amended ordinance limiting the development of private sewer systems was not a “decision” of the county for purposes of triggering the 30-day period to appeal under O.C.G.A. § 5-3-20; therefore, the developer’s claim of inverse condemnation never ripened. *Mortgage Alliance Corp. v. Pickens County*, 294 Ga. 212, 751 S.E.2d 51 (2013).

Action time barred. — Trial court properly denied a challenger’s claim for injunctive relief against a city because the

challenger failed to file the suit within 90 days of the city council meeting ratifying the purchase of the real property challenged, therefore, the action was untimely

under the Open and Public Meetings Act, O.C.G.A. § 50-14-1(b)(2). *Tisdale v. City of Cumming*, 326 Ga. App. 19, 755 S.E.2d 833 (2014).

OPINIONS OF THE ATTORNEY GENERAL

**Access to deeds, liens, and plats.** Georgia Superior Court Clerks' Cooperative Authority is required to produce images and index data in response to Open Records Act, O.C.G.A. § 50-18-70 et seq., requests for information contained on the

online information system for deeds, liens, and plats, but may do so in accordance with a fee schedule adopted pursuant to O.C.G.A. § 15-6-94. 2012 Op. Att'y Gen. No. 12-5.

50-14-3. Excluded proceedings.

JUDICIAL DECISIONS

**Cited in** *City of Baldwin v. Woodard & Curran, Inc.*, 293 Ga. 19, 743 S.E.2d 381 (2013).

50-14-4. Procedure when meeting closed.

JUDICIAL DECISIONS

**Act not violated when subsequent meeting was open.** — Because a bond and a supplemental resolution to the bond were considered at a subsequent meeting at which no closed executive session occurred, and the bond action was discussed and acted upon at the subsequent open meeting, the contentions regarding prob-

lems with the prior meeting did not affect the validity of the airport authority's ultimate decision to issue the revised bond, and the airport authority did not violate the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 et seq. *Avery v. State of Ga.*, 295 Ga. 630, 761 S.E.2d 56 (2014).

CHAPTER 16

PUBLIC PROPERTY

Article 2	Sec.	
State Properties Code		commission, General Assembly, or Governor; execution of leases and deeds.
Sec.		
50-16-31. Definitions.	50-16-40.	Consideration of conveyances by the General Assembly.
50-16-34. Powers and duties of State Properties Commission generally.	50-16-41.	Rental agreements without competitive bidding authorized; limitations; commission charged with managing administrative space of all state enti-
50-16-39. Public competitive bidding procedure for sales and leases; acceptance or rejection of bids by		



Sec.

ties; standards governing the utilization of administrative space; reassignment of administrative space; rules and regulations.

without competitive bidding authorized; terms and conditions; telephone lines construction provisions unaffected; exception.

50-16-42. Revocable license agreements

## ARTICLE 2

### STATE PROPERTIES CODE

#### 50-16-31. Definitions.

As used in this article, the term:

(1) “Acquire,” “acquisition,” and “acquiring” mean the obtaining of real property by any method including, but not limited to, gift, purchase, condemnation, devise, court order, and exchange.

(1.1) “Administrative space” means any space, whether existing or to be constructed, that is required by a state entity for office, storage, or special purposes and that is required for the core mission of such state entity. In order to be required, the space must be necessary for and utilized in either:

(A) The performance of the duties that the state entity is obligated by law to perform; or

(B) The delivery of the services that the state entity is authorized or required by law to provide.

(2) “Commission” means the State Properties Commission created by Code Section 50-16-32. The commission was formerly known as the State Properties Control Commission and is the successor in law to the State Properties Control Commission, State Properties Acquisition Commission, and the Mineral Leasing Commission.

(2.1) “Conveyance” means the sale or other disposition of real property including a transfer of fee simple title, lease, and easement.

(3) “Deed” means either a fee simple deed without warranty or a quitclaim deed.

(3.1) “Entities” or “entity” means any and all constitutional offices, as well as all authorities, departments, divisions, boards, bureaus, commissions, agencies, instrumentalities, or institutions of the state.

(4) “Lease” means a written instrument under the terms and conditions of which one party (lessor) out of its own estate grants and conveys to another party or parties (lessee) an estate for years retaining a reversion in itself after such grant and conveyance.



(5) “Mineral resources” means, but is not limited to, sand, sulfur, phosphate, oil, and gas.

(6) “Person” means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; authority; fiduciary; governmental body, instrumentality, or other organization of the state; county of the state; municipal corporation of the state; political subdivision of the state; governmental subdivision of the state; and any other legal entity doing business in the state.

(7) “Power,” “empower(ed),” “authority,” and “authorized” are synonymous and when each is used it shall include the other, the same as if the other had been fully expressed. When the commission has the power or is empowered, it has the authority and is authorized. “Authorized” and “may” shall imply discretion and not requirement.

(8) “Property” means:

(A) The Western and Atlantic Railroad including all the property associated with the railroad as of December 26, 1969, unless the same has otherwise been provided for by Act or resolution of the General Assembly;

(B) All the property owned by the state in Tennessee other than that property included in subparagraph (A) of this paragraph;

(C) The state owned property facing Peachtree, Cain, and Spring streets in the City of Atlanta, Fulton County, Georgia, upon which the Governor’s mansion once stood and which is commonly referred to and known as the “Henry Grady Hotel property” or “old Governor’s mansion site property”;

(D) Any state owned real property the custody and control of which has been transferred to the commission by executive order of the Governor;

(E) Any state owned real property the custody and control of which has been transferred to the commission by an Act or resolution of the General Assembly without specific instructions as to its disposition; and

(F) Any real property interest titled in the name of the state.

(9) “Rental agreement” means a written instrument the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only usufruct.

(10) “Revocable license” means the granting, subject to certain terms and conditions contained in a written revocable license agree-



ment, to a named person or persons (licensee), and to that person or persons only, of a revocable personal privilege to use a certain described parcel or tract of the property to be known as the licensed premises for a named purpose. Regardless of any and all improvements and investments made, consideration paid, or expenses and harm incurred or encountered by the licensee, a revocable license shall not confer upon the licensee any right, title, interest, or estate in the licensed premises, nor shall a revocable license confer upon the licensee a license coupled with an interest or an easement. A revocable license may be revoked, canceled, or terminated, with or without cause, at any time by the licensor (commission).

(11) “Revocable license agreement” means a written instrument which embodies a revocable license and which sets forth the names of the parties thereto and the terms and conditions upon which the revocable license is granted.

(12) “State” means the State of Georgia.

(13) “State agency” or “state agencies” means any department, division, bureau, board, commission, including the State Properties Commission created by Code Section 50-16-32, or agency within the executive branch of state government.

(14) “Terms and conditions” shall include stipulations, provisions, agreements, and covenants. (Code 1933, § 91-102A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, § 1; Code 1933, § 91-102a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 2005, p. 100, §§ 7, 8/SB 158; Ga. L. 2014, p. 467, § 1/HB 495.)

**The 2014 amendment**, effective April 22, 2014, added paragraph (2.1) and in paragraph (8), deleted “and” at the end of subparagraph (8)(D), substituted “; and” for a period at the end of subparagraph (8)(E), and added subparagraph (8)(F).

## **50-16-34. Powers and duties of State Properties Commission generally.**

The commission, in addition to other powers and duties set forth in other Code sections of this article, shall have the power and duty to:

- (1) Inspect, control, manage, oversee, and preserve the property;
- (2) Maintain at all times a current inventory of the property;
- (3) Authorize the payment of any tax or assessment legally levied by the State of Tennessee or any governmental subdivision thereof upon any part of the property situated within the State of Tennessee;
- (4) Prepare lease or sale proposals affecting the property for submission to the General Assembly;



(5) Approve a conveyance of state property; provided, however, that the commission shall not be authorized to approve a conveyance of state property that exceeds a value of \$500,000.00 as determined by an appraisal or opinion of value;

(6) Subject to the limitation contained in this article, determine all of the terms and conditions of each instrument prepared or executed by it;

(7) Have prepared a thorough report of such data as will enable the commission to arrive at a fair valuation of the property; and to include within the report either an opinion of the value if the conveyance is to a public entity or at least one written appraisal of the value of the property if the conveyance is to a private entity, which appraisal shall be made by a person or persons familiar with property values in the area where the property is situated and who is a member of a nationally recognized appraisal organization. If the written appraisal values the property in excess of \$100,000.00 then a second written appraisal shall be required. In the case of the Western and Atlantic Railroad, at least two written appraisals shall be required one of which may be the latest valuation report of the Western and Atlantic Railroad prepared by the Interstate Commerce Commission or successor agency;

(8) Contract with any person for the preparation of studies or reports as to:

(A) The value of such property including, but not limited to, sale value, lease value, and insurance value;

(B) The proper utilization to be made of such property; and

(C) Any other data necessary or desirable to assist the commission in the execution and performance of its duties;

(9) Insure the improvements on all or any part of the property against loss or damage by fire, lightning, tornado, or other insurable casualty; and insure the contents of the improvements against any such loss or damage;

(10) Inspect as necessary any of the property which may be under a lease, rental agreement, or revocable license agreement in order to determine whether the property is being kept, preserved, cared for, repaired, maintained, used, and operated in accordance with the terms and conditions of the lease, rental agreement, or revocable license agreement and to take such action necessary to correct any violation of the terms and conditions of the lease, rental agreement, or revocable license agreement;

(11) Deal with and dispose of any unauthorized encroachment upon, or use or occupancy of, any part of the property, whether the



encroachment, use, or occupancy is permissive or adverse, or whether with or without claim of right therefor; to determine whether the encroachment, use, or occupancy shall be removed or discontinued or whether it shall be permitted to continue and, if so, to what extent and upon what terms and conditions; to adjust, settle, and finally dispose of any controversy that may exist or arise with respect to any such encroachment, use, or occupancy in such manner and upon such terms and conditions as the commission may deem to be in the best interest of the state; to take such action as the commission may deem proper and expedient to cause the removal or discontinuance of any such encroachment, use, or occupancy; and to institute and prosecute for and on behalf of and in the name of the state such actions and other legal proceedings as the commission may deem appropriate for the protection of the state's interest in or the assertion of the state's title to such property;

(12) Settle, adjust, and finally dispose of any claim, dispute, or controversy of any kind whatsoever arising out of the terms and conditions, operation, or expiration of any lease of the property or grant of rights in the property;

(13) Negotiate and prepare for submission to the General Assembly amendments to any existing lease, which amendments shall not, for the purposes of paragraph (4) of this Code section and Code Section 50-16-39, be interpreted as lease proposals or proposals to lease, provided:

(A) That the lessee of the lease as it is to be amended shall be either the lessee, a successor, an assignee, or a sublessee as to all or a portion of the property described in the lease as first executed or as heretofore amended; and

(B) On or before December 31 in each year the executive director of the State Properties Commission shall submit a report describing all conveyances and proposed conveyances negotiated during that year or under negotiation at the date of the report to the chairpersons of the Senate State Institutions and Property Committee and the House Committee on State Properties or such other standing committee that routinely considers state property related issues as designated by the President of the Senate or the Speaker of the House of Representatives;

(14) Exercise such other powers and perform such other duties as may be necessary or desirable to inspect, control, manage, oversee, and preserve the property;

(15) Do all things and perform all acts necessary or convenient to carry out the powers and fulfill the duties given to the commission in this article;



(16) Perform all terms including, but not limited to, termination, satisfy all conditions, fulfill all requirements, and discharge all obligations and duties contained in all conveyances which provide that the commission is empowered to act or shall act for and on behalf of the state and which conveyances have heretofore been approved and adopted by a resolution of the General Assembly or which conveyances may be approved and adopted by a resolution of the General Assembly approved by the Governor;

(17) Perform all terms, satisfy all conditions, fulfill all requirements, discharge all obligations, and otherwise implement the disposition of real property for and on behalf of the state when the General Assembly so provides in any enactment, including Acts or resolutions, authorizing or directing a disposition of real property of the state or of any instrumentality of the state; and

(18) Provide or perform acquisition related services to or for all state entities. (Code 1933, § 91-104A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, § 3; Ga. L. 1970, p. 455, § 1; Code 1933, § 91-105a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1974, p. 1035, § 1; Ga. L. 1974, p. 1040, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1979, p. 816, §§ 1, 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 1408, § 1; Ga. L. 1985, p. 1423, § 1; Ga. L. 1986, p. 10, § 50; Ga. L. 1988, p. 554, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 2005, p. 100, § 11/SB 158; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2009, p. 303, § 11/HB 117; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 467, § 2/HB 495.)

**The 2014 amendment**, effective April 22, 2014, added paragraph (5); redesignated former paragraphs (5) through (17) as present paragraphs (6) through (18), respectively; substituted the present provisions of paragraph (7) for the former provisions, which read: "Have prepared, in advance of advertising for bids as provided for in Code Section 50-16-39, a thorough report of such data as will enable the commission to arrive at a fair valuation of the property involved in such advertisement; and to include within the report at least two written appraisals of the value of the property, which appraisals shall be made by a person or persons familiar with property values in the area where the property is situated; provided, however, that one of the appraisals shall be made by a member of a nationally recognized appraisal organization; and provided, further, that in the case of the Western and Atlantic Railroad, the appraisal, other

than the one required to be made by a member of a nationally recognized appraisal organization, may be the latest valuation report of the Western and Atlantic Railroad prepared by the Interstate Commerce Commission"; rewrote paragraph (13); in paragraph (16), substituted "conveyances" for "leases or contracts of sale of the property" near the beginning and substituted "behalf of the state and which conveyances have heretofore been approved and adopted by a resolution of the General Assembly or which conveyances may be approved and adopted by a resolution of the General Assembly approved" for "behalf of the state (lessor or seller) and which leases or contracts of sale have heretofore been approved and adopted (passed) or authorized by a resolution of the General Assembly or which leases or contracts of sale may be approved and adopted (passed) or authorized by a resolution of the General As-



sembly with the latter resolution being approved" in the middle.

**50-16-39. Public competitive bidding procedure for sales and leases; acceptance or rejection of bids by commission, General Assembly, or Governor; execution of leases and deeds.**

(a) Subject to authorization by the General Assembly as provided in Code Section 50-16-40, any conveyance, other than a grant of easement, lease, or exchange of real property, shall be initiated and carried out in accordance with this Code section.

(b) A conveyance to a private entity shall be made only upon a public competitive process in accordance with rules established by the commission. The commission shall be authorized to accept sealed bids and best and final offers for any conveyance of property.

(c) When a conveyance is based upon the acceptance of sealed bids, the bids shall be submitted to the executive director of the commission, or his or her designee, and each bid shall be accompanied by a bid bond or such other security as may be prescribed by the commission. All bids shall be opened in public on the date and at the time and place specified in the invitation for bids. The commission shall formally determine and announce which bid and bidder it considers to be most advantageous to the state. The commission shall have the right to reject any or all bids and bidders and the right to waive formalities in bidding.

(d) The commission shall give no less than 30 days' prior written notice of its intention to convey property which has been declared surplus. Notice shall be made by registered or certified mail or statutory overnight delivery and electronic transmission. The notice shall include a description of the property including the size, location, and prior use. The notice shall be mailed and electronically transmitted to the Office of Legislative Counsel, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the standing committees of the Senate and the House of Representatives which regularly consider proposed legislation related to state property, and all members of the General Assembly whose legislative district contains all or a portion of the property that is the subject of a proposed conveyance. If any member of the General Assembly whose legislative district contains all or a portion of the property that is a subject of a proposed conveyance objects to such conveyance in writing to the commission not later than 30 days following the mailing of the notice required by this subsection, then the commission shall no longer be authorized to convey such property without the approval of the General Assembly as provided in Code Section 50-16-40.



(e) When the commission formally determines and announces which bid and bidder or offer and offeror it considers to be most advantageous to the state, the commission shall then prepare the instrument of lease or contract of sale and deed. The chairperson of the commission, in his or her capacity as Governor of the state or, with the permission of the Governor, the executive director, shall execute and deliver to the purchaser the contract of sale for and on behalf of and in the name of the state, and thereupon both parties to the agreement shall be bound thereby. The Governor's signature or the signature of the executive director shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State or the executive director shall also affix the great seal of the state to the contract of sale. Whenever, in the judgment of the chairperson of the commission, all of the terms and conditions of the contract of sale, or all of the precedent terms and conditions of the contract of sale, or all of the precedent terms and conditions of the lease have been fulfilled or complied with, the chairperson of the commission in his or her capacity as Governor of the state shall execute and deliver to the purchaser or lessee the deed or lease for and on behalf of and in the name of the state. The Governor's or executive director's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State or executive director shall also affix the great seal of the state to the deed or lease. (Code 1933, § 91-109A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, §§ 4, 5; Code 1933, § 91-106a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2014, p. 467, § 3/HB 495; Ga. L. 2015, p. 828, § 1/HB 104.)

**The 2014 amendment**, effective April 22, 2014, rewrote this Code section.

**The 2015 amendment**, effective July 1, 2015, substituted "grant of easement,

lease, or exchange of real property" for "lease of mineral resources provided for in Code Section 50-16-43" in the middle of subsection (a).

## **50-16-40. Consideration of conveyances by the General Assembly.**

### **(a) Approval by the General Assembly of conveyances generally.**

(1) The commission shall prepare each conveyance of property with a value of \$500,000.00 or more for consideration by the General Assembly and the Governor as provided in this Code section.

(2) The commission shall not submit to the General Assembly for its consideration any conveyance which provides that either:

(A) The conveyee will not obtain possession of the leased premises within a period of five years from the commencement date of



the regular session of the General Assembly to which the conveyance is submitted for consideration; or

(B) The term of the conveyance will not commence within a period of five years from the commencement date of the regular session of the General Assembly to which the conveyance is submitted for consideration.

**(b) Conveyances submitted to the General Assembly during regular session.**

(1) A resolution containing a general description of the proposed conveyance shall be introduced in the General Assembly in either the Senate, the House of Representatives, or both, if then in regular session, or if not in regular session at such time, at the next regular session of the General Assembly; provided, however, that conveyances may be considered outside the regular session of the General Assembly in a manner provided in subsection (c) of this Code section. Such resolution shall be prepared with the assistance of the Office of Legislative Counsel and shall not be submitted until approved by that office. The resolution shall authorize the commission to convey the property by appropriate instrument for fair market value or other consideration and provisions as the commission shall in its discretion determine to be in the best interest of the State of Georgia. The resolution, in order to become effective, shall receive the same number of readings and in both the Senate and the House of Representatives go through the same processes and procedures as a bill:

(A) If either the Senate or the House of Representatives fails to adopt the resolution during the regular session by a majority vote in each house, the conveyance shall be considered rejected by the General Assembly;

(B) If the resolution is adopted during the regular session by a majority vote of both the Senate and the House of Representatives but is not approved by the Governor, the conveyance shall be considered rejected by the Governor; and

(C) If the resolution is adopted during the regular session by a majority vote of both the Senate and the House of Representatives and is approved by the Governor, whenever in the judgment of the chairperson of the commission all of the precedent terms and conditions of the resolution, if there are any, have been fulfilled or complied with, the chairperson of the commission, in his or her capacity as Governor of the state, or the executive director shall execute and deliver to the conveyee the agreement for and on behalf of and in the name of the State of Georgia. The Governor's or executive director's signature shall be attested by the secretary



of the commission in his or her capacity as Secretary of State. The Secretary of State or executive director shall also affix the great seal of the state to the amendment.

(2) A conveyance resolution submitted to the General Assembly during the regular legislative session pursuant to this subsection shall not be amended or considered for amendment after more than 20 days of its original filing in either the Senate or the House of Representatives. In addition, such bill shall not have any amendment at any time that pertains to matters unrelated to a state property conveyance.

**(c) Conveyances initiated prior to regular session of the General Assembly.**

(1) Not more than twice outside of the regular session of the General Assembly the commission may prepare a resolution containing a description of proposed conveyances which shall be submitted to the President of the Senate and the Speaker of the House of Representatives and to the chairpersons of the standing committees of the Senate and of the House of Representatives which regularly consider proposed legislation related to state property. The resolution shall be prepared with the assistance of the Office of Legislative Counsel and shall not be submitted until approved by that office. A copy of the proposed resolution shall also be provided to each member whose legislative district contains all or a portion of the property that is the subject of a proposed conveyance.

(2) The standing committees that regularly consider matters related to state property in the Senate and the House of Representatives may meet not more than twice a year at a time outside of the regular legislative session of the General Assembly, on or about July and October of each year. At such meeting the committees shall only consider property conveyance resolutions submitted by the commission and shall vote to approve or disapprove of such resolution. If a committee in the Senate or the House of Representatives approves a resolution by a majority vote, then a committee report shall be prepared reflecting the committee's approval of the resolution. If both the Senate and the House of Representatives committees approve a resolution, then the resolution shall be filed at the next regular session of the General Assembly with a copy of both committee reports attached. The resolution, in order to become effective, shall receive the same number of readings in both the Senate and the House of Representatives and shall then be voted on as any other bill; provided, however, that such bills shall not be subject to assignment to any committee or subcommittee of either the Senate or the House of Representatives and shall not be subject to any amendment. (Code 1933, § 91-108A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933,



§ 91-107a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2014, p. 467, § 4/HB 495.)

**The 2014 amendment**, effective April 22, 2014, designated the existing provisions of this Code section as subsection (a); in subsection (a), added a heading, added paragraph (a)(1), added the para-

graph (a)(2) designation, in paragraph (a)(2), substituted “conveyance” for “lease” throughout, and substituted “conveyee” for “lessee” in subparagraph (a)(2)(A); and added subsections (b) and (c).

**50-16-41. Rental agreements without competitive bidding authorized; limitations; commission charged with managing administrative space of all state entities; standards governing the utilization of administrative space; reassignment of administrative space; rules and regulations.**

(a) Notwithstanding any provisions and requirements of law to the contrary, the commission is authorized to negotiate, prepare, and enter into in its own name rental agreements whereby a part of the property is rented, without public competitive bidding, to a person for a length of time not to exceed one year and for adequate monetary consideration (in no instance to be less than a rate of \$250.00 per year), which shall be determined by the commission, and pursuant to such terms and conditions as the commission shall determine to be in the best interest of the state. The same property or any part thereof shall not be the subject matter of more than one such rental agreement to the same person unless the commission shall determine that there are extenuating circumstances present which would make additional one-year rental agreements beneficial to the state; provided, however, the same property or any part thereof shall not after April 24, 1975, be the subject matter of more than a total of three such one-year rental agreements to the same person.

(b) The commission is given the authority and charged with the duty of managing the utilization of administrative space by all state entities, except that the Board of Regents of the University System of Georgia may manage its own space but only for leases that are for a term of one year or less, within the State of Georgia, and required for its core mission. The commission shall manage the utilization of administrative space for all multiyear lease agreements entered into on behalf of any state entity, including the Board of Regents of the University System of Georgia. The commission shall manage in a manner that is the most cost efficient and operationally effective and which provides decentralization of state government. Such management shall include the authority to assign and reassign administrative space to state entities based on the needs of the entities as determined by standards for administrative space utilization promulgated by the commission pur-



suant to subsection (g) of this Code section and shall include the obligation to advise the Office of Planning and Budget and state entities of cost-effective, decentralized alternatives.

(c) The management of the utilization of administrative space by the commission shall include entering into any necessary agreements to rent or lease administrative space, whether existing or to be constructed, and shall include administrative space rented or leased by a state entity from the Georgia Building Authority or from any other public or private person, firm, or corporation. When it becomes necessary to rent or lease administrative space, the space shall be rented or leased by the commission for a term not to exceed 20 years. The space shall be assigned to the state entity or entities requiring the space. A multiyear lease resulting from a sale and lease back shall be treated as a conveyance of real property by the state and shall be reviewed for approval or disapproval by the General Assembly and Governor in the same manner as a conveyance of state properties provided for in Code Section 50-16-39.

(d) If the commission reassigns all or any portion of any administrative space which is leased or rented by one state entity to another state entity, the state entity to which the administrative space is reassigned may pay to the commission rental charges, as determined by the commission, for the utilization of the space; and the commission may, in turn, use the rental charges so paid for the purpose of paying or partially paying, as the case may be, the rent or lease payments due the lessor of the administrative space in accordance with the terms of the lease or rent contract existing at the time of the reassignment of the administrative space. Any such payments to a lessor by the commission shall be on behalf of the state entity which is the lessee of the administrative space reassigned as provided in this Code section.

(e) The management of the utilization of administrative space given to the commission by this Code section shall not be construed to impair the obligation of any contract executed before July 1, 1976, between any state entity and the Georgia Building Authority or between any state entity and any other public or private person, firm, or corporation; and the powers given to the commission by this Code section shall not be implemented or carried out in such a manner as to impair the obligation of any such contract.

(f) The commission is authorized and directed to develop and promulgate standards governing the utilization of administrative space by all state entities which require emphasis on cost effectiveness and decentralization. The standards shall be uniformly applied to all state entities except as otherwise provided by subsection (g) of this Code section, but the standards shall recognize and provide for different types of administrative space required by the various state entities and



the different types of administrative space that may be required by a single state entity.

(g) The commission shall be authorized to reassign administrative space to the various state entities in order to bring the utilization of administrative space into conformity with the standards promulgated under subsection (f) of this Code section. Any additional administrative space required by a state entity shall be approved by and obtained through the commission. The commission shall be authorized to grant exceptions to the standards governing the utilization of administrative space when the reassignment of such space would involve unnecessary expenses or the disruption of services being provided by a state entity. The commission shall adopt and promulgate rules and regulations governing the granting of such exceptions, and the rules and regulations shall be uniformly applied by the commission to all state entities requesting an exception to the standards.

(h) For purposes of cost effectiveness and decentralization, the following factors, among other factors, shall be considered:

(1) Dual location of programs within a city should be considered in order to take advantage of possible economies of scale and as a matter of convenience to the general public; or

(2) When all factors are reasonably equivalent, preferences will be given to location of state government programs and facilities in those counties which are determined by the Department of Community Affairs to be the most economically depressed, meaning those 71 tier 1 counties of the state designated as least developed under paragraph (2) of subsection (b) of Code Section 48-7-40.

(i) The commission is authorized and directed to promulgate rules and regulations governing budgetary requirements for administrative space utilized by state entities in cooperation with the Office of Planning and Budget whereby the entities shall be accountable in the budgetary process for administrative space assigned to and utilized by them. The budgetary requirements may provide for the payment of rent to the commission by state entities or may otherwise provide procedures for the assessment of rent charges for administrative space utilized by state entities or any combination of the foregoing.

(j) The commission shall provide a multiyear leasing report annually, no later than September 1 of each year, to the Governor, President of the Senate, Speaker of the House of Representatives, chairpersons of the Senate Appropriations Committee and the House Committee on Appropriations, and chairpersons of the Senate State Institutions and Property Committee and the House Committee on State Properties. The report shall provide the total sum of all leasing obligations to be paid by the state for the upcoming fiscal year. Such report shall include



an itemization and total of all revenues collected from the previous fiscal year and provide an itemized budget allocation for the upcoming fiscal year. The report shall also provide a list of all existing multiyear lease agreements and the identity of the contracting parties for each.

(k) In addition to the standards and rules and regulations specifically provided for by this Code section, the commission is authorized to adopt such other rules and regulations as may be required to carry out this Code section efficiently and effectively.

(l)(1) The Georgia State Financing and Investment Commission is authorized to establish fiscal policies regarding multiyear lease and rental agreements and, each fiscal year, may establish a total multiyear contract value authority. During the fiscal year, the multiyear contract value authority may be revised as determined necessary by the Georgia State Financing and Investment Commission. The total multiyear contract value authority may be based upon the Governor's revenue estimate for subsequent fiscal years and other information as determined by the Georgia State Financing and Investment Commission.

(2) No multiyear lease or rental agreement shall be entered into under the provisions of this Code section until the Georgia State Financing and Investment Commission has established the fiscal policies and multiyear contract value authority for the current and future fiscal years. Any multiyear lease or rental agreement entered into that is not in compliance with such fiscal policies and multiyear contract value authority shall be void and of no effect.

(3) At the beginning of each fiscal year, a budget unit's appropriations shall be encumbered for the estimated payments for any multiyear lease and rental agreements in that fiscal year. The commission shall have the right to terminate, without further obligation, any multiyear lease or rental agreement if the commission determines that adequate funds will not be available for the payment obligations of the commission under the agreement. The commission's determination regarding the availability of funds for its obligations shall be conclusive and binding on all parties to the multiyear lease or rental agreement. (Code 1933, § 91-108a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2005, p. 100, § 14/SB 158; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2012, p. 989, § 1/SB 37; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2013, p. 685, § 3/SB 177; Ga. L. 2015, p. 828, § 2/HB 104.)

**The 2015 amendment**, effective July 1, 2015, deleted "and particularly notwithstanding the requirements of Code

Section 50-16-39" following "contrary" in the first sentence of subsection (a).



**50-16-42. Revocable license agreements without competitive bidding authorized; terms and conditions; telephone lines construction provisions unaffected; exception.**

(a) Notwithstanding any provisions and requirements of law to the contrary, the commission shall have the exclusive power to negotiate, prepare, and grant in its own name, without public competitive bidding, a revocable license to any person to enter upon, extend from, cross through, over, or under, or otherwise to encroach upon any of the property under the custody and control of the commission or under the custody and control of any state agency which is subject to the requirements of Code Section 50-16-38.

(b) Any grant of revocable license by the commission to any person shall be in writing and shall contain such terms and conditions as the commission shall determine to be in the best interest of the state, provided that:

(1) Each grant of revocable license, if not revoked prior to, shall stand revoked, canceled, and terminated as of the third anniversary of the date of the revocable license agreement;

(2) Each grant of revocable license shall provide that, regardless of any and all improvements and investments made, consideration paid, or expenses and harm incurred or encountered by the licensee, the same shall not confer upon the licensee any right, title, interest, or estate in the licensed premises nor confer upon the licensee a license coupled with an interest or an easement, such grant of a revocable license conferring upon the licensee and only the licensee a mere personal privilege revocable by the commission, with or without cause, at any time during the life of the revocable license;

(3) Each grant of revocable license shall be made for an adequate monetary consideration of not less than \$650.00, the adequacy of which shall be determined by the commission in considering the factors involved in each grant, particularly for whose principal benefit the revocable license is being granted; however, if the commission determines that the revocable license directly benefits the state, then any monetary consideration set by the commission shall be deemed adequate; and

(4) Any grant of revocable license shall be subject to approval by any appropriate state regulatory agency that the proposed use of the licensed property meets all applicable safety and regulatory standards and requirements.

(c) This Code section shall not be construed or interpreted as amending, conflicting with, or superseding any or all of Code Section 46-5-1, relating to the construction of telephone lines.



(d) This Code section shall not apply to the issuance or renewal of revocable licenses or permits for the construction and maintenance of boat docks on High Falls Lake. Such revocable licenses or permits shall be issued by the Department of Natural Resources pursuant to Code Section 12-3-34. (Code 1933, § 91-109A.1, enacted by Ga. L. 1971, p. 578, § 1; Code 1933, § 91-109.1A, as redesignated by Ga. L. 1972, p. 429, § 1; Code 1933, § 91-109a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1990, p. 1489, § 1; Ga. L. 1993, p. 396, § 2; Ga. L. 2012, p. 847, § 12/HB 1115; Ga. L. 2015, p. 828, § 3/HB 104.)

The 2015 amendment, effective July 1, 2015, deleted “and particularly notwithstanding the requirements of Code

Section 50-16-39” following “contrary” near the beginning of subsection (a).

CHAPTER 17	
STATE DEBT, INVESTMENT, AND DEPOSITORIES	
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State Financing and Investment	
Sec.	
50-17-21. Definitions.	
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ARTICLE 2

STATE FINANCING AND INVESTMENT

50-17-21. Definitions.

- As used in this article, the term:
- (1) “Commission” means the Georgia State Financing and Investment Commission as defined by Article VII, Section IV, Paragraph VII of the Constitution, consisting of the Governor, the President of the Senate, the Speaker of the House of Representatives, the state auditor, the Attorney General, the state treasurer, and the Commissioner of Agriculture, and declared an agency and instrumentality of the state.

(2) “Constitution” means the Constitution of the State of Georgia of 1983.

(3) “Financial advisory matters” means all matters pertaining to the issuance of state debt and state authority bonds and the invest-



ment of funds created by the issuance of such debt or bonds and the performing of ministerial services in connection with the issuance, marketing, and delivery of all such debt or bonds. Financial advice shall include the development and recommendation to state authorities of a financial plan which will provide state authorities with required funds.

(4) “Fiscal officer of the state” means the state treasurer or such other officer as may be designated by a valid Act of the General Assembly to perform the functions of the state treasurer with respect to public debt.

(5) “General obligation debt” means obligations of this state issued pursuant to this article to acquire, construct, develop, extend, enlarge, or improve land, waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945, adopted November 8, 1960, for which the full faith, credit, and taxing power of the state are pledged for the payment thereof. “General obligation debt” also means obligations of this state issued to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. “General obligation debt” further means debt incurred to make loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems.

(6) “Guaranteed revenue debt” means revenue obligations issued by an instrumentality of the state pursuant to this article to finance toll bridges, toll roads, and any other land public transportation facilities or systems and water and sewer facilities or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes, the payment of which has been guaranteed by the state as provided in this article.

(7) “Public debt” means any debt authorized by Article VII, Section IV of the Constitution.

(8) “Sinking fund” means the State of Georgia General Obligation Debt Sinking Fund established by this article.

(9) “State authorities” means the following instrumentalities of the state: Georgia Building Authority, Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, State Road and Tollway Authority, Georgia Ports Authority, Georgia Development Authority, Jekyll Island—State



Park Authority, Stone Mountain Memorial Association, North Georgia Mountains Authority, Lake Lanier Islands Development Authority, Groveland Lake Development Authority, Georgia Higher Education Assistance Authority, the Georgia Housing and Finance Authority, and other instrumentalities of the state created by the General Assembly and authorized to issue debt and not specifically exempt from this article. (Ga. L. 1973, p. 750, § 2; Ga. L. 1974, p. 171, § 1; Ga. L. 1979, p. 401, §§ 1-5; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 4; Ga. L. 1983, p. 1024, § 1; Ga. L. 1984, p. 22, § 50; Ga. L. 1987, p. 642, § 1; Ga. L. 1988, p. 426, § 2; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2010, p. 863, § 6/SB 296; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 866, § 50/SB 340.)

**The 2014 amendment**, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, deleted “Georgia Building Authority (Markets),” preceding “Georgia Education Authority (Schools)” near the beginning of paragraph (9).

## ARTICLE 3

### STATE DEPOSITORIES

#### **50-17-50. Creation of State Depository Board; membership; quorum; assignment for administrative purposes.**

The State Depository Board, referred to in this article as the “board,” is created, consisting of the Governor, the state chief financial officer, the state accounting officer, the commissioner of banking and finance, the state revenue commissioner, the commissioner of transportation, and the state treasurer, who shall act as administrative officer of the board. A majority of the board shall constitute a quorum, and the acts of the majority shall be the acts of the board. The board, in its discretion, may name and appoint, from time to time, as state depositories of state funds any bank, trust company, or savings and loan association which has its deposits insured by the Federal Deposit Insurance Corporation. The board may also authorize any department, board, bureau, or other agency of the state which has a foreign office to deposit state funds for current operating expenses in certain foreign banks, the deposits of which are not insured by the Federal Deposit Insurance Corporation, provided the balance of such deposits in any one foreign bank does not exceed limits prescribed by the State Depository Board. For the purposes of this article, “foreign bank” shall mean a bank organized under the laws of a foreign country. The board is assigned to the Department of Administrative Services for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1878-79, p. 88, § 1; Code 1882, § 943a; Ga. L. 1888, p. 34, § 1; Ga. L. 1889, p. 54, § 1; Ga. L. 1890-91, p. 67, § 1; Ga. L. 1892, p. 54, § 1; Ga. L. 1893, p.



24, § 1; Ga. L. 1893, p. 25, § 1; Ga. L. 1893, p. 26, § 1; Ga. L. 1893, p. 27, § 1; Ga. L. 1893, p. 28, § 1; Ga. L. 1895, p. 21, § 1; Civil Code 1895, § 982; Ga. L. 1896, p. 39, § 1; Ga. L. 1897, p. 22, § 1; Ga. L. 1898, p. 46, § 1; Ga. L. 1899, p. 27, § 1; Ga. L. 1900, p. 43, § 1; Ga. L. 1901, p. 24, § 1; Ga. L. 1901, p. 25, § 1; Ga. L. 1901, p. 26, § 1; Ga. L. 1901, p. 27, § 1; Ga. L. 1901, p. 28, § 1; Ga. L. 1901, p. 29, § 1; Ga. L. 1902, p. 42, § 1; Ga. L. 1902, p. 43, § 1; Ga. L. 1902, p. 44, § 1; Ga. L. 1902, p. 45, § 1; Ga. L. 1902, p. 46, § 1; Ga. L. 1902, p. 47, § 1; Ga. L. 1902, p. 48, § 1; Ga. L. 1903, p. 28, § 1; Ga. L. 1903, p. 29, § 1; Ga. L. 1903, p. 30, § 1; Ga. L. 1903, p. 31, § 1; Ga. L. 1904, p. 56, § 1; Ga. L. 1904, p. 57, § 1; Ga. L. 1904, p. 58, § 1; Ga. L. 1905, p. 70, § 1; Ga. L. 1905, p. 71, § 1; Ga. L. 1905, p. 72, § 1; Ga. L. 1906, p. 34, § 1; Ga. L. 1906, p. 35, § 1; Ga. L. 1906, p. 36, § 1; Ga. L. 1906, p. 37, § 1; Ga. L. 1906, p. 38, § 1; Ga. L. 1906, p. 39, § 1; Ga. L. 1906, p. 40, § 1; Ga. L. 1906, p. 41, § 1; Ga. L. 1906, p. 42, § 1; Ga. L. 1907, p. 51, § 1; Ga. L. 1907, p. 52, § 1; Ga. L. 1907, p. 53, § 1; Ga. L. 1907, p. 54, § 1; Ga. L. 1908, p. 37, § 1; Ga. L. 1908, p. 38, § 1; Ga. L. 1908, p. 39, § 1; Ga. L. 1908, p. 40, § 1; Ga. L. 1909, p. 82, § 1; Ga. L. 1909, p. 83, § 1; Ga. L. 1909, p. 84, § 1; Ga. L. 1909, p. 85, § 1; Ga. L. 1909, p. 86, § 1; Civil Code 1910, § 1249; Ga. L. 1910, p. 50, § 1; Ga. L. 1910, p. 51, § 1; Ga. L. 1910, p. 52, § 1; Ga. L. 1910, p. 53, § 1; Ga. L. 1911, p. 57, § 1; Ga. L. 1911, p. 58, § 1; Ga. L. 1911, p. 59, § 1; Ga. L. 1911, p. 60, § 1; Ga. L. 1911, p. 61, § 1; Ga. L. 1911, p. 62, § 1; Ga. L. 1911, p. 63, § 1; Ga. L. 1911, p. 64, § 1; Ga. L. 1912, p. 47, § 1; Ga. L. 1912, p. 48, § 1; Ga. L. 1912, p. 49, § 1; Ga. L. 1912, p. 50, § 1; Ga. L. 1912, p. 51, § 1; Ga. L. 1913, p. 40, § 1; Ga. L. 1913, p. 41, § 1; Ga. L. 1914, p. 49, § 1; Ga. L. 1914, p. 50, § 1; Ga. L. 1914, p. 51, § 1; Ga. L. 1914, p. 52, § 1; Ga. L. 1914, p. 53, § 1; Ga. L. 1914, p. 54, § 1; Ga. L. 1914, p. 55, § 1; Ga. L. 1914, p. 56, § 1; Ga. L. 1915, p. 12, § 1; Ga. L. 1915, p. 13, § 1; Ga. L. 1915, p. 14, § 1; Ga. L. 1915, p. 15, § 1; Ga. L. 1916, p. 34, § 1; Ga. L. 1916, p. 35, § 1; Ga. L. 1916, p. 36, § 1; Ga. L. 1918, p. 111, § 1; Ga. L. 1919, p. 83, § 1; Ga. L. 1919, p. 84, § 1; Ga. L. 1920, p. 69, § 1; Ga. L. 1920, p. 70, § 1; Ga. L. 1920, p. 71, § 1; Ga. L. 1920, p. 72, § 1; Ga. L. 1920, p. 73, § 1; Ga. L. 1921, p. 98, § 1; Ga. L. 1921, p. 99, § 1; Ga. L. 1921, p. 100, § 1; Ga. L. 1922, p. 43, § 1; Ga. L. 1922, p. 44, § 1; Ga. L. 1922, p. 45, § 1; Ga. L. 1923, p. 54, § 1; Ga. L. 1923, p. 55, § 1; Ga. L. 1924, p. 49, § 1; Ga. L. 1925, p. 82, § 1; Ga. L. 1925, p. 83, § 1; Ga. L. 1925, p. 84, § 1; Ga. L. 1925, p. 85, § 1; Ga. L. 1925, p. 86, § 1; Ga. L. 1927, p. 140, § 1; Ga. L. 1927, p. 141, § 1; Ga. L. 1927, p. 142, § 1; Ga. L. 1929, p. 159, § 1; Ga. L. 1929, p. 161, § 1; Ga. L. 1929, p. 162, § 1; Ga. L. 1931, p. 119, § 1; Code 1933, § 100-101; Ga. L. 1949, p. 13, §§ 1, 2; Ga. L. 1960, p. 1144, § 1; Ga. L. 1969, p. 681, § 1; Ga. L. 1971, p. 553, § 1; Ga. L. 1972, p. 1015, § 413; Ga. L. 1973, p. 149, § 1; Ga. L. 1980, p. 763, § 1; Ga. L. 1986, p. 855, § 29; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 863, § 1; Ga. L. 1997, p. 1525, § 1; Ga. L. 2005, p. 694, § 14/HB 293; Ga. L. 2010, p. 863, §§ 3, 4/SB 296; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2015, p. 1055, § 1/SB 104.)



**The 2015 amendment**, effective July 1, 2015, in this Code section, substituted “the state chief financial officer” for “the Commissioner of Insurance” in the first sentence; substituted “bank, trust company, or savings and loan association” for “bank or trust company” in the third sentence; and deleted the former fourth sentence, which read: “The board may also

name and appoint as state depositories of state funds any building and loan association or federal savings and loan association which has its deposits insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Georgia Credit Union Deposit Corporation.”

CHAPTER 18

STATE PRINTING AND DOCUMENTS

Article 4

Inspection of Public Records

Sec.

50-18-72. When public disclosure not required.

ARTICLE 2

COURT REPORTS

50-18-37. Rules compilation.

**Editor’s notes.** — The catchline for this Code section has been set out to

correct the catchline that appears in the main volume.

ARTICLE 4

INSPECTION OF PUBLIC RECORDS

**Editor’s notes.** — “This article is commonly referred to as the ‘Open Records

Law’ or ‘Open Records Act,’ although those names are not official.

50-18-70. Legislative intent; definitions.

**Law reviews.** — For article, “Prison Accountability and Performance Measures,” see 63 Emory L. J. 339 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

EXCEPTIONS



### General Consideration

**Privity between the plaintiffs.** — In a suit brought by the plaintiff alleging a violation of the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., the trial court erred in finding that the doctrine of res judicata barred the plaintiff's action because there was no privity between the plaintiffs in the prior lawsuit and the current action. *Sampson v. Ga. Dep't of Juvenile Justice*, 328 Ga. App. 733, 760 S.E.2d 203 (2014).

§ 50-18-72(a)(47) to provide that Quick Start records disclosing an economic development project are excepted only to the extent that no binding commitment has been secured, but the exception for Quick Start records relating to job applicants or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity is not so limited. *Deal v. Coleman*, 294 Ga. 170, 751 S.E.2d 337 (2013).

### Exceptions

**Quick start records.** — Supreme Court of Georgia interpreted O.C.G.A.

## OPINIONS OF THE ATTORNEY GENERAL

**Access to deeds, liens, and plats.** — Georgia Superior Court Clerks' Cooperative Authority is required to produce images and index data in response to Open Records Act, O.C.G.A. § 50-18-70 et seq., requests for information contained on the

online information system for deeds, liens, and plats, but may do so in accordance with a fee schedule adopted pursuant to O.C.G.A. § 15-6-94. 2012 Op. Att'y Gen. No. 12-5.

## 50-18-71. Right of access; timing; fees; denial of requests; impact of electronic records.

## JUDICIAL DECISIONS

**Open Records Act not applicable.** — Trial court did not err in denying the plaintiff's request for a mandamus nisi because the Open Records Act, O.C.G.A. § 50-14-1, et seq., was not available to enforce compliance with the plaintiff's requests for information from the county board of tax assessors regarding property

tax assessments as those requests were made pursuant to another statute and not the Open Records Act. *Hansen v. DeKalb County Board of Tax Assessors*, 295 Ga. 385, 761 S.E.2d 35 (2014).

**Cited in** *Deal v. Coleman*, 294 Ga. 170, 751 S.E.2d 337 (2013).

## 50-18-72. When public disclosure not required.

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by federal statute or regulation to be kept confidential;

(2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;

(3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records is reasonably likely to disclose the identity of a confi-



dential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;

(4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated; and provided, further, that this paragraph shall not apply to records in the possession of an agency that is the subject of the pending investigation or prosecution; and provided, further, that the release of booking photographs shall only be permissible in accordance with Code Section 35-1-18;

(5) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

(A) Has a personal, professional, or business connection with a party to the accident;

(B) Owns or leases an interest in property allegedly or actually damaged in the accident;

(C) Was allegedly or actually injured by the accident;

(D) Was a witness to the accident;

(E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

(F) Is a prosecutor or a publicly employed law enforcement officer;

(G) Is alleged to be liable to another party as a result of the accident;



(H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;

(I) Is gathering information as a representative of a news media organization; provided, however, that such representative submits a statement affirming that the use of such accident report is in compliance with Code Section 33-24-53. Any person who knowingly makes a false statement in requesting such accident report shall be guilty of a violation of Code Section 16-10-20;

(J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, that this subparagraph shall apply only to accident reports on accidents that occurred more than 60 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted; or

(K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;

(6) Jury list data, including, but not limited to, persons' names, dates of birth, addresses, ages, race, gender, telephone numbers, social security numbers, and when it is available, the person's ethnicity, and other confidential identifying information that is collected and used by The Council of Superior Court Clerks of Georgia for creating, compiling, and maintaining state-wide master jury lists and county master jury lists for the purpose of establishing and maintaining county jury source lists pursuant to the provisions of Chapter 12 of Title 15; provided, however, that when ordered by the judge of a court having jurisdiction over a case in which a challenge to the array of the grand or trial jury has been filed, The Council of Superior Court Clerks of Georgia, superior court clerk, or jury clerk shall provide data within the time limit established by the court for the limited purpose of such challenge. The Council of Superior Court Clerks of Georgia, superior court clerk, or jury clerk shall not be liable for any use or misuse of such data;

(7) Records consisting of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee;

(8) Records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against



public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;

(9) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned;

(10) Pending, rejected, or deferred sealed bids or sealed proposals and detailed cost estimates related thereto until such time as the final award of the contract is made, the project is terminated or abandoned, or the agency in possession of the records takes a public vote regarding the sealed bid or sealed proposal, whichever comes first;

(11) Records which identify persons applying for or under consideration for employment or appointment as executive head of an agency or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position of executive head of an agency or five business days prior to the meeting at which final action or vote is to be taken on the position of president of a unit of the University System of Georgia, all documents concerning as many as three persons under consideration whom the agency has determined to be the best qualified for the position shall be subject to inspection and copying. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to such person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process without conducting interviews or discussing or deliberating in executive session in a manner otherwise consistent with Chapter 14 of this title, it shall not be required to delay final action on the position. The agency shall not be required to release such records of other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

(12) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional



Reapportionment Office, the Senate Research Office, or the House Budget and Research Office, provided that this exception shall not have any application to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;

(13) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;

(14) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

(15) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;

(16) Agricultural or food system records, data, or information that are considered by the Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(17) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of



such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term “national animal identification program” means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herdmates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(18) Records that contain site-specific information regarding the occurrence of rare species of plants or animals or the location of sensitive natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

(19) Records that reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;

(20)(A) Records that reveal an individual’s social security number, mother’s birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information, insurance or medical information in all records, unlisted telephone number if so designated in a public record, personal e-mail address or cellular telephone number, day and month of birth, and information regarding public utility, television, Internet, or telephone accounts held by private customers, provided that nonitemized bills showing amounts owed and amounts paid shall be available. Items exempted by this subparagraph shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such



entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that the news media organization exception in this subparagraph shall not apply to paragraph (21) of this subsection.

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;

(ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;

(iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;

(iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;

(v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;

(vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;

(vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

(viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;



(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy.

(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.

(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;

(21) Records concerning public employees that reveal the public employee's home address, home telephone number, day and month of birth, social security number, insurance or medical information, mother's birth name, credit card information, debit card information, bank account information, account number, utility account number, password used to access his or her account, financial data or information other than compensation by a government agency, unlisted telephone number if so designated in a public record, and the identity of the public employee's immediate family members or dependents. This paragraph shall not apply to public records that do not specifically identify public employees or their jobs, titles, or offices. For the purposes of this paragraph, the term "public employee" means any officer, employee, or former employee of:

(A) The State of Georgia or its agencies, departments, or commissions;



(B) Any county or municipality or its agencies, departments, or commissions;

(C) Other political subdivisions of this state;

(D) Teachers in public and charter schools and nonpublic schools; or

(E) Early care and education programs administered through the Department of Early Care and Learning;

(22) Records of the Department of Early Care and Learning that contain the:

(A) Names of children and day and month of each child's birth;

(B) Names, addresses, telephone numbers, or e-mail addresses of parents, immediate family members, and emergency contact persons; or

(C) Names or other identifying information of individuals who report violations to the department;

(23) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;

(24) Records acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, including, but not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

(25)(A) Records the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:

(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;

(ii) Any plan for protection against terrorist or other attacks that depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;



(iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks that depend for their effectiveness in whole or in part upon a lack of general public knowledge;

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts; and

(v) Records of any government sponsored programs concerning training relative to governmental security measures which would identify persons being trained or instructors or would reveal information described in divisions (i) through (iv) of this subparagraph.

(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in division (i) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

(26) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (5) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point. Such information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

(26.1) In addition to the exemption provided by paragraph (26) of this subsection, audio recordings of a 9-1-1 telephone call to a public safety answering point which contain the speech in distress or cries in extremis of a caller who died during the call or the speech or cries of a person who was a minor at the time of the call, except to the following, provided that the person seeking the audio recording of a



9-1-1 telephone call submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

(A) A duly appointed representative of a deceased caller's estate;

(B) A parent or legal guardian of a minor caller;

(C) An accused in a criminal case when, in the good faith belief of the accused, the audio recording of the 9-1-1 telephone call is relevant to his or her criminal proceeding;

(D) A party to a civil action when, in the good faith belief of such party, the audio recording of the 9-1-1 telephone call is relevant to the civil action;

(E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or

(F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, the audio recording of the 9-1-1 telephone call is relevant to the potential civil action;

(26.2) Audio and video recordings from devices used by law enforcement officers in a place where there is a reasonable expectation of privacy when there is no pending investigation, except to the following, provided that the person seeking the audio or video recording submits a sworn affidavit that attests to the facts necessary to establish eligibility under this paragraph:

(A) A duly appointed representative of a deceased's estate when the decedent was depicted or heard on such recording;

(B) A parent or legal guardian of a minor depicted or heard on such recording;

(C) An accused in a criminal case when, in the good faith belief of the accused, such recording is relevant to his or her criminal proceeding;

(D) A party to a civil action when, in the good faith belief of such party, such recording is relevant to the civil action;

(E) An attorney for any of the persons identified in subparagraphs (A) through (D) of this paragraph; or

(F) An attorney for a person who may pursue a civil action when, in the good faith belief of such attorney, such recording is relevant to the potential civil action;

(27) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by



name, address, telephone number, or emergency contact, unless such identifying information has been redacted;

(28) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon any toll project;

(29) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of \$10,000.00 in the aggregate in a calendar year; and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

(30) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard, SmartCard, or successor or similar system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard, SmartCard, or successor or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;

(31) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38;

(32) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 and are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies;

(33) Records that are expressly exempt from public inspection pursuant to Code Sections 47-1-14 and 47-7-127;

(34) Any trade secrets obtained from a person or business entity that are required by law, regulation, bid, or request for proposal to be submitted to an agency. An entity submitting records containing



trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;

(35) Data, records, or information of a proprietary nature produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of, or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

(36) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity, until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This paragraph shall apply to, but shall not be limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works;

(37) Any record that would not be subject to disclosure, or the disclosure of which would jeopardize the receipt of federal funds, under 20 U.S.C. Section 1232g or its implementing regulations;



(38) Unless otherwise provided by law, records consisting of questions, scoring keys, and other materials constituting a test that derives value from being unknown to the test taker prior to administration which is to be administered by an agency, including, but not limited to, any public school, any unit of the Board of Regents of the University System of Georgia, any public technical school, the State Board of Education, the Office of Student Achievement, the Professional Standards Commission, or a local school system, if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test. These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics;

(39) Records disclosing the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health, the Department of Public Health, the Department of Behavioral Health and Developmental Disabilities, or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity;

(40) Any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to weapons carry licenses, or pursuant to any other requirement for maintaining records relative to the possession of firearms, except to the extent that such records relating to licensing and possession of firearms are sought by law enforcement agencies or a judge of the probate court as provided by law;

(41) Records containing communications subject to the attorney-client privilege recognized by state law; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to the attorney-client privilege. Attorney-client communications, however, may be obtained



in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which such proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(42) Confidential attorney work product; provided, however, that this paragraph shall not apply to the factual findings, but shall apply to the legal conclusions, of an attorney conducting an investigation on behalf of an agency so long as such investigation does not pertain to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; and provided, further, that such investigations conducted by hospital authorities to ensure compliance with federal or state law, regulations, or reimbursement policies shall be exempt from disclosure if such investigations are otherwise subject to confidentiality as attorney work product. In addition, when an agency withholds information subject to this paragraph, any party authorized to bring a proceeding under Code Section 50-18-73 may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld;

(43) Records containing tax matters or tax information that is confidential under state or federal law;

(44) Records consisting of any computer program or computer software used or maintained in the course of operation of a public office or agency; provided, however, that data generated, kept, or received by an agency shall be subject to inspection and copying as provided in this article;

(45) Records pertaining to the rating plans, rating systems, underwriting rules, surveys, inspections, statistical plans, or similar proprietary information used to provide or administer liability insurance or self-insurance coverage to any agency;

(46) Documents maintained by the Department of Economic Development pertaining to an economic development project until the economic development project is secured by binding commitment, provided that any such documents shall be disclosed upon proper request after a binding commitment has been secured or the project has been terminated. No later than five business days after the



Department of Economic Development secures a binding commitment and the department has committed the use of state funds from the OneGeorgia Authority or funds from Regional Economic Business Assistance for the project pursuant to Code Section 50-8-8, or other provisions of law, the Department of Economic Development shall give notice that a binding commitment has been reached by posting on its website notice of the project in conjunction with a copy of the Department of Economic Development's records documenting the bidding commitment made in connection with the project and the negotiation relating thereto and by publishing notice of the project and participating parties in the legal organ of each county in which the economic development project is to be located. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business;

(47) Records related to a training program operated under the authority of Article 3 of Chapter 4 of Title 20 disclosing an economic development project prior to a binding commitment having been secured, relating to job applicants, or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity. As used in this paragraph, the term "economic development project" means a plan or proposal to locate a business, or to expand a business, that would involve an expenditure of more than \$25 million by the business or the hiring of more than 50 employees by the business;

(48) Records that are expressly exempt from public inspection pursuant to Code Section 47-20-87;

(49) Data, records, or information acquired by the Commissioner of Labor or the Department of Labor as part of any investigation required pursuant to Code Section 39-2-18, relating to minors employed as actors or performers; or

(50) Held by the Georgia Superior Court Clerks' Cooperative Authority or any other public or private entity for and on behalf of a clerk of superior court; provided, however, that such records may be obtained from a clerk of superior court unless otherwise exempted from disclosure.

(b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

(c)(1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not



be open to public inspection without approval of the judge assigned to the case.

(2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:

- (A) A photograph;
- (B) A photocopy;
- (C) A facsimile; or
- (D) Another reproduction.

(3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.

(d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000.00, or both. (Ga. L. 1967, p. 455, § 1; Ga. L. 1970, p. 163, § 1; Code 1981, § 50-18-72, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1986, p. 1090, § 2; Ga. L. 1987, p. 377, § 1; Ga. L. 1988, p. 13, § 50; Ga. L. 1988, p. 243, § 3; Ga. L. 1989, p. 553, § 2; Ga. L. 1989, p. 827, § 1; Ga. L. 1990, p. 341, § 1; Ga. L. 1992, p. 1061, § 8; Ga. L. 1993, p. 968, § 1; Ga. L. 1993, p. 1336, § 1; Ga. L. 1993, p. 1669, § 1; Ga. L. 1995, p. 704, § 1; Ga. L. 1996, p. 6, § 50; Ga. L. 1997, p. 1052, § 2; Ga. L. 1998, p. 1652, § 1; Ga. L. 1999, p. 552, §§ 4, 4.1; Ga. L. 1999, p. 809, §§ 4, 5; Ga. L. 1999, p. 1222, §§ 1, 2; Ga. L. 2000, p. 136, § 50; Ga. L. 2000, p. 1556, §§ 1, 2; Ga. L. 2001, p. 4, § 50; Ga. L. 2001, p. 327, § 1; Ga. L. 2001, p. 331, § 1; Ga. L. 2001, p. 491, § 1; Ga. L. 2001, p. 820, § 13; Ga. L. 2002, p. 415, § 50; Ga. L. 2003, p. 602, § 1; Ga. L. 2003, p. 880, § 2; Ga. L. 2004, p. 107, § 22; Ga. L. 2004, p. 161, § 15; Ga. L. 2004, p. 341, § 1A; Ga. L. 2004, p. 410, § 9; Ga. L. 2004, p. 770, § 1; Ga. L. 2005, p. 334, § 30-2/HB 501; Ga. L. 2005, p. 558, § 1/HB 437; Ga. L. 2005, p. 595, § 1/SB 121; Ga. L. 2005, p. 660, § 11/HB 470; Ga. L. 2005, p. 1133, § 1/HB 340; Ga. L. 2006, p. 72,



§ 50/SB 465; Ga. L. 2006, p. 536, § 1/HB 955; Ga. L. 2007, p. 87, § 1/SB 212; Ga. L. 2007, p. 160, § 1/HB 101; Ga. L. 2008, p. 564, § 2/SB 33; Ga. L. 2008, p. 829, § 4/HB 1020; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 37, §§ 1, 1.1, 1.2/SB 26; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 698, § 7/HB 126; Ga. L. 2010, p. 243, §§ 1, 2/HB 1086; Ga. L. 2010, p. 286, § 23/SB 244; Ga. L. 2010, p. 415, § 2/HB 249; Ga. L. 2010, p. 963, § 2-21/SB 308; Ga. L. 2011, p. 59, §§ 3-1, 1-68/HB 415; Ga. L. 2011, p. 611, § 1/HB 261; Ga. L. 2011, p. 705, § 5-29/HB 214; Ga. L. 2012, p. 211, § 4/SB 402; Ga. L. 2012, p. 218, § 2/HB 397; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 418, § 2/HB 828; Ga. L. 2014, p. 451, § 15/HB 776; Ga. L. 2014, p. 692, § 1/HB 449; Ga. L. 2014, p. 742, § 2/HB 845; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2015, p. 805, § 13/HB 492; Ga. L. 2015, p. 943, § 5/HB 366; Ga. L. 2015, p. 1046, § 5/SB 94; Ga. L. 2015, p. 1065, § 2-3/SB 135.)

**The 2014 amendments.** — The first 2014 amendment, effective July 1, 2014, added the proviso at the end of subparagraph (a)(5)(I) and substituted “60 days” for “30 days” near the end of subparagraph (a)(5)(J). The second 2014 amendment, effective July 1, 2014, in paragraph (a)(6), in the first sentence, substituted “The Council” for “the Council” near the middle and substituted “The Council of Superior Court Clerks of Georgia, superior court clerk, or jury clerk shall” for “the Council of Superior Court Clerks of Georgia or the clerk of the county board of jury commissioners of any county shall” and substituted the present provisions of the second sentence for the former provisions, which read: “Neither the Council of Superior Court Clerks of Georgia nor the clerk of a county board of jury commissioners shall be liable for any use or misuse of such data”. The third 2014 amendment, effective July 1, 2014, added paragraph (a)(26.1). The fourth 2014 amendment,

effective July 1, 2014, added the proviso at the end of paragraph (a)(4). The fifth 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “paragraph (5)” for “paragraph (3)” in paragraph (a)(26).

**The 2015 amendments.** — The first 2015 amendment, effective July 1, 2015, inserted “or a judge of the probate court” near the end of paragraph (a)(40). The second 2015 amendment, effective July 1, 2015, added paragraph (a)(49). The third 2015 amendment, effective July 1, 2015, added paragraph (a)(26.2). The fourth 2015 amendment, effective July 1, 2015, added paragraph (a)(49). See the Code Commission note regarding the effect of these amendments.

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 2015, paragraph (a)(49), as added by Ga. L. 2015, p. 1065, § 2-3/SB 135, was redesignated as paragraph (a)(50), “; or” was deleted at the end of paragraph (a)(48), and “; or” was added at the end of paragraph (a)(49).

## JUDICIAL DECISIONS

### ANALYSIS

#### GENERAL CONSIDERATION

##### General Consideration

**Construction.** — Georgia Supreme Court concludes that the right of access afforded by the Open Records Act, O.C.G.A. § 50-18-70(b) et seq., is a public right of the people as a whole and, as such,

it could not vest in any particular persons, whether upon the making of a request for public records, or upon the filing of an action to enforce the public right; thus, there is no constitutional impediment to the retroactive modification of the Act by



**General Consideration (Cont'd)**

subsequent legislation. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

**Construction of statutory exemptions.**

Supreme Court of Georgia interpreted O.C.G.A. § 50-18-72(a)(47) to provide that Quick Start records disclosing an economic development project are excepted only to the extent that no binding commitment has been secured, but the exception for Quick Start records relating to job applicants or identifying proprietary hiring practices, training, skills, or other business methods and practices of a private entity is not so limited. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Statutory exception in O.C.G.A. § 50-18-72(a)(47) may constitutionally be

applied retroactively. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

In a suit wherein requestors sought access to Quick Start records under O.C.G.A. § 50-18-72(a)(47), the statute applied retroactively to the case but the case required a remand for the trial court to sort out the extent to which the specific parts of the requests sought only records that were excepted under § 50-18-72(a)(47) and to dismiss the lawsuit as to those parts of the requests. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

Open Records Act, O.C.G.A. § 50-18-72(a)(47), provides explicitly that § 50-18-72(a)(47) shall apply retroactively to any request for public records made prior to the effective date of the Act. Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

**50-18-73. Jurisdiction to enforce article; attorney’s fees and litigation expenses; good faith reliance as defense to action.**

**JUDICIAL DECISIONS**

**Cited** in Deal v. Coleman, 294 Ga. 170, 751 S.E.2d 337 (2013).

**CHAPTER 21**

**WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS EX CONTRACTU; STATE TORT CLAIMS**

**ARTICLE 1**

**WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS EX CONTRACTU**

**50-21-1. Waiver of sovereign immunity as to actions ex contractu for breach of written contract to which state is party; venue.**

**JUDICIAL DECISIONS**

**Venue.** — Trial court had jurisdiction over the plaintiff’s suit for breach of con-

tract filed in the State Court of Fulton County because the plain meaning of the



last sentence of O.C.G.A. § 50-21-1(b) shows that venue for such a claim is not exclusive to the Superior Court of Fulton County, but rather that venue in that court shall be cumulative and supplemental to other legal venue. *Bd. of Regents of the Univ. Sys. of Ga. v. Winter*, 331 Ga. App. 528, 771 S.E.2d 201 (2015).

**Medical college faculty members.** — In a medical malpractice suit, two physicians were entitled to official immunity under O.C.G.A. §§ 50-21-23(b) and 50-21-25(a) because the record established that the physicians were full-time faculty members at a Georgia medical college performing the physicians' regular duties of employment at the time the

estate's decedent was allegedly injured. *Cook v. Forrester*, 323 Ga. App. 631, 746 S.E.2d 624 (2013).

**Immunity waived for surety's subrogation action against state.** — Surety on a public contract, after assisting the contractor in completing the project, stood in the place of the contractor and was subrogated to the contractor's right of action for breach of contract against the Georgia Department of Corrections; under Ga. Const 1983, Art. I, Sec. II, Para. IX(c), the state waived sovereign immunity for contracts. *State Dep't of Corr. v. Developers Sur. & Indem. Co.*, 295 Ga. 741, 763 S.E.2d 868 (2014).

## ARTICLE 2

### STATE TORT CLAIMS

**Law reviews.** — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

#### 50-21-20. Short title.

### JUDICIAL DECISIONS

**Physicians employed by state medical college.** — Two physicians were entitled to official immunity in a medical malpractice suit brought against the physicians by the parents of a newborn infant injured by the medical team's failure to ensure the child was adequately oxygenated during intubation because the physicians were acting within the scope of their state employment at the Medical College of Georgia in rendering the medical care at issue. *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

Effect of recognizing official immunity does not necessarily leave the injured plaintiff without recourse as, while official immunity relieves the state employee of personal liability, the injured plaintiff may still seek relief against the state government entity for which the state officer or employee was acting, pursuant to the Georgia Tort Claims Act, O.C.G.A. §§ 50-21-23 and 50-21-25(b). *Shekhawat*

*v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

Georgia Supreme Court overruled *Keenan v. Plouffe*, 267 Ga. 791 (1997) and holds that the analysis of a physician's official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., shall proceed exclusively on the basis of whether the physician was acting within the scope of the physician's state employment in performing the treatment that is the subject of the malpractice action. *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

**College campus police officers.** — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts.



*Hartley v. Agnes Scott College*, 295 Ga. 458, 759 S.E.2d 857 (2014).

**Waiver of immunity for inmate injured while working on warden's home.** — In a suit brought by an inmate wherein a successful jury verdict was obtained against the Georgia Department of Corrections after the inmate was injured while working on a painting detail at the warden's house, the trial court properly denied the Department's motion to dis-

miss based on sovereign immunity because under the Georgia Tort Claims Act, O.C.G.A. § 50-21-23(a), the state waived sovereign immunity for the torts of state employees while acting within the scope of the employees' official duties in the same manner as a private individual or entity would be liable under like circumstances. *Ga. Dep't of Corr. v. Couch*, 322 Ga. App. 234, 744 S.E.2d 432 (2013).

## 50-21-21. Legislative intent.

### JUDICIAL DECISIONS

**College campus police officers did not qualify for immunity.** — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, et seq., because

the officers were not acting for any state government entity when the officers committed the alleged torts. *Hartley v. Agnes Scott College*, 295 Ga. 458, 759 S.E.2d 857 (2014).

**Cited in** *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

## 50-21-22. Definitions.

### JUDICIAL DECISIONS

#### **"State officer or employee."**

Denial of motion to dismiss was reversed because in fulfilling their "law enforcement powers" granted by O.C.G.A. § 20-8-2, the campus police officers were acting on behalf or in service of the state in an official capacity and, thus, the officers were "state officers" under O.C.G.A. § 50-21-22(7). *Agnes Scott College v. Hartley*, 321 Ga. App. 74, 741 S.E.2d 199 (2013).

**School districts excluded from definition of "state".** — School district was not an arm of the state for purposes of federal immunity in part because the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., explicitly excludes school districts from the Act's definition of "state." *Lightfoot v. Henry County Sch. Dist.*, 771 F.3d 764 (11th Cir. 2014).

**Campus police entitled to immunity.** — Denial of motion to dismiss was reversed because in fulfilling their "law enforcement powers" granted by O.C.G.A. § 20-8-2, the campus police officers were acting on behalf or in service of the state

in an official capacity and, thus, the officers were "state officers" under O.C.G.A. § 50-21-22(7). *Agnes Scott College v. Hartley*, 321 Ga. App. 74, 741 S.E.2d 199 (2013).

**College campus police officers.** — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. *Hartley v. Agnes Scott College*, 295 Ga. 458, 759 S.E.2d 857 (2014).

**Investigation of child abuse.** — Appellate court erred by reversing the dismissal of a negligence suit against a state agency regarding a report of abuse from a pediatrician of two boys because the case manager's decisions about how to investigate the report required a balancing of policy considerations, thus, the discretionary function exception under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2),



applied and the case was properly dismissed by the trial court. *Ga. Dep't of Human Servs. v. Spruill*, 294 Ga. 100, 751 S.E.2d 315 (2013).

**Cited** in *Ga. Reg'l Transp. Auth. v. Foster*, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

### 50-21-23. Limited waiver of sovereign immunity.

#### JUDICIAL DECISIONS

**State employed physicians entitled to official immunity.** — In a medical malpractice suit, two physicians were entitled to official immunity under O.C.G.A. §§ 50-21-23(b) and 50-21-25(a) because the record established that the physicians were full-time faculty members at a Georgia medical college performing the physicians regular duties of employment at the time the estate's decedent was allegedly injured. *Cook v. Forrester*, 323 Ga. App. 631, 746 S.E.2d 624 (2013).

**Construction with tolling provision of O.C.G.A. § 36-33-5(d).** — The tolling provision of O.C.G.A. § 36-33-5(d) cannot be harmonized with the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., and, thus, has no application to suits brought pursuant to the GTCA, notwithstanding the language of O.C.G.A. § 50-21-27(e). *Ga. Reg'l Transp. Auth. v. Foster*, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

#### **Georgia Department of Transportation.**

Dismissal of an injured couple's claims against the DOT to the extent they were based on a theory of negligent inspection of the county-owned area in which the accident occurred was proper under O.C.G.A. § 50-21-24(8); the waiver of immunity with respect to design claims under § 50-21-24(10) did not extend to waive immunity for inspection claims. *Diamond v. DOT*, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

In a construction site collision, the Georgia Department of Transportation was entitled to immunity for the department's alleged negligence in approving the site plan for traffic control and in furnishing the basic traffic control plan, pursuant to O.C.G.A. § 50-21-24(9). *Ga. DOT v. Owens*, 330 Ga. App. 123, 766 S.E.2d 569 (2014).

**Department of Corrections immunity waived when inmate injured working on warden's home.** — In a suit brought by an inmate wherein a successful jury verdict was obtained against the Georgia Department of Corrections after the inmate was injured while working on a painting detail at the warden's house, the trial court properly denied the Department's motion to dismiss based on sovereign immunity because under the Georgia Tort Claims Act, O.C.G.A. § 50-21-23(a), the state waived sovereign immunity for the torts of state employees while acting within the scope of the employees' official duties in the same manner as a private individual or entity would be liable under like circumstances. *Ga. Dep't of Corr. v. Couch*, 322 Ga. App. 234, 744 S.E.2d 432 (2013).

#### **No waiver of immunity.**

In a case brought by employees of a contractor against the Board of Regents of the University System of Georgia, O.C.G.A. § 50-21-23(a) of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not waive the Board's sovereign immunity for torts committed by a third party, in this case the contractor, in providing a forged payment bond to the Board and failing to pay the employees. *Bd. of Regents of the Univ. Sys. of Ga. v. Brooks*, 324 Ga. App. 15, 749 S.E.2d 23 (2013).

**College campus police officers did not qualify for immunity.** — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. *Hartley v. Agnes Scott College*, 295 Ga. 458, 759 S.E.2d 857 (2014).



**Physicians employed by state medical college.** — Georgia Supreme Court overruled *Keenan v. Plouffe*, 267 Ga. 791, (1997) and holds that the analysis of a physician’s official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., shall proceed exclusively on the basis of whether the physician was acting within the scope of the physician’s state employment in performing the treatment that is the subject of the malpractice action. *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

Two physicians were entitled to official immunity in a medical malpractice suit brought against the physicians by the parents of a newborn infant injured by the medical team’s failure to ensure the child was adequately oxygenated during intubation because the physicians were acting within the scope of the physicians’ state employment at the Medical College of Georgia in rendering the medical care at issue. *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

Effect of recognizing official immunity

does not necessarily leave the injured plaintiff without recourse as, while official immunity relieves the state employee of personal liability, the injured plaintiff may still seek relief against the state government entity for which the state officer or employee was acting, pursuant to the Georgia Tort Claims Act, O.C.G.A. §§ 50-21-23 and 50-21-25(b). *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

**Investigation of child abuse.** — Appellate court erred by reversing the dismissal of a negligence suit against a state agency regarding a report of abuse from a pediatrician of two children because the case manager’s decisions about how to investigate the report required a balancing of policy considerations, thus, the discretionary function exception under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2), applied and the case was properly dismissed by the trial court. *Ga. Dep’t of Human Servs. v. Spruill*, 294 Ga. 100, 751 S.E.2d 315 (2013).

50-21-24. Exceptions to state liability.

JUDICIAL DECISIONS

ANALYSIS

DISCRETIONARY FUNCTIONS

APPLICATION

- 1. DEPARTMENT OF TRANSPORTATION
- 2. CRIMINAL ACTS

Discretionary Functions

**Investigation of child abuse.** — Appellate court erred by reversing the dismissal of a negligence suit against a state agency regarding a report of abuse from a pediatrician of two children because the case manager’s decisions about how to investigate the report required a balancing of policy considerations, thus, the discretionary function exception under the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(2), applied and the case was properly dismissed by the trial court. *Ga. Dep’t of Human Servs. v. Spruill*, 294 Ga. 100, 751 S.E.2d 315 (2013).

Application

1. Department of Transportation

**Waiver of immunity for design claims did not waive immunity for inspection claims.** — Dismissal of an injured couple’s claims against the DOT to the extent those claims were based on a theory of negligent inspection of the county-owned area in which the accident occurred was proper under O.C.G.A. § 50-21-24(8); the waiver of immunity with respect to design claims under § 50-21-24(10) did not extend to waive immunity for inspection claims. *Diamond*



v. DOT, 326 Ga. App. 189, 756 S.E.2d 277 (2014).

**Contractor's design of stockpile location for project materials.** — In an accident case arising out of the DOT's actions in reviewing and approving a materials stockpile location in a highway construction project and a traffic plan proposed by the contractor, under O.C.G.A. § 50-21-24(9), the DOT was immune from liability resulting from the DOT's approval of the stockpile plan. *DOT v. Jarvie*, 329 Ga. App. 681, 766 S.E.2d 94 (2014).

## 2. Criminal Acts

### Battery.

Assault and battery exception to the

## 50-21-25. Immunity of state officers or employees for acts within scope of official duties or employment; officer or employee not named in action against state; settlement or judgment.

### JUDICIAL DECISIONS

**Officer immune in suit.** — Trial court erred by entering a default judgment against a police officer for failing to timely answer because the officer was immune from suit on the claim brought under state law, thus, the default judgment entered on that claim was a nullity and the trial court lacked subject matter jurisdiction and should have dismissed the state law cause of action for lack of subject matter jurisdiction. *Ferrell v. Young*, 323 Ga. App. 338, 746 S.E.2d 167 (2013).

**College campus police officers did not qualify for immunity.** — Campus police officers employed by a private college did not qualify as state officers or employees who may assert immunity from tort suits under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20, et seq., because the officers were not acting for any state government entity when the officers committed the alleged torts. *Hartley v. Agnes Scott College*, 295 Ga. 458, 759 S.E.2d 857 (2014).

**State employed physician entitled to official immunity.**

In a medical malpractice suit, two physicians were entitled to official immunity under O.C.G.A. §§ 50-21-23(b) and

Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., barred the student's claims for negligence, negligence per se, and negligent training and supervision against the Board of Regents because the loss suffered by the student was a severe injury to the leg resulting from a fight with another football player after the football coach instructed the players to fight to prove the players were worthy of membership on the team. *Pelham v. Bd. of Regents of the Univ. Sys. of Ga.*, 321 Ga. App. 791, 743 S.E.2d 469 (2013).

50-21-25(a) because the record established that the physicians were full-time faculty members at a Georgia medical college performing the physicians' regular duties of employment at the time the estate's decedent was allegedly injured. *Cook v. Forrester*, 323 Ga. App. 631, 746 S.E.2d 624 (2013).

**Physicians employed by state medical college.** — Georgia Supreme Court overruled *Keenan v. Plouffe*, 267 Ga. 791, (1997) and holds that the analysis of a physician's official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., shall proceed exclusively on the basis of whether the physician was acting within the scope of the physician's state employment in performing the treatment that is the subject of the malpractice action. *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

Two physicians were entitled to official immunity in a medical malpractice suit brought against the physicians by the parents of a newborn infant injured by the medical team's failure to ensure the child was adequately oxygenated during intubation because the physicians were acting within the scope of the physicians



state employment at the Medical College of Georgia in rendering the medical care at issue. However, the effect of recognizing official immunity does not necessarily leave the injured plaintiff without recourse as, while official immunity relieves the state employee of personal liability,

the injured plaintiff may still seek relief against the state government entity for which the state officer or employee was acting, pursuant to the Georgia Tort Claims Act, O.C.G.A. §§ 50-21-23 and 50-21-25(b). *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).

**50-21-26. Notice of claim against state; time for commencement of action; examination of records to facilitate investigation of claims; confidential nature of documents and information furnished.**

**Law reviews.** — For annual survey on trial practice and procedure, see 66 *Mercer L. Rev.* 211 (2014).

**JUDICIAL DECISIONS**

**Failure to state dollar amount.** — Pro se parent's ante litem notice to the state in a wrongful death case that stated that the amount of the loss suffered was the "monetary value of the decedent's life" was insufficient because the plain language of the ante litem statute required that a dollar amount be stated, O.C.G.A. § 50-21-26(a)(5)(E), and the parent could have assigned a loss based on the parent's knowledge and belief. *Dorn v. Ga. Dep't of Behavioral Health & Developmental Disabilities*, 329 Ga. App. 384, 765 S.E.2d 385 (2014).

**Failure to set forth amount of claim in ante litem notice.**

State university student's ante litem notice regarding the student's injuries suffered in a university parking lot failed to strictly comply with O.C.G.A. § 50-21-26(a)(5)(E) because the notice did not state any amount of loss whatsoever; the statute required notice of the amount of the loss claimed at that time, within the belief and knowledge of the student. The student had actually incurred medical expenses of \$4,180 at the time the student gave notice. *Bd. of Regents of the Univ. Sys. of Ga. v. Myers*, 295 Ga. 843, 764 S.E.2d 543 (2014).

**Adequate compliance with ante litem notice.**

Trial court did not err in denying the Department of Transportation's motion to dismiss the driver's action because the driver identified the portion of the highway on which the accident occurred to the extent that the driver knew it, the Department acknowledged that the Department could identify the locations of the storm drains and manholes along that part of the interstate, and the state investigated the claim after the ante litem notice was filed and made the driver an offer of settlement. *Ga. DOT v. Griggs*, 322 Ga. App. 519, 745 S.E.2d 749 (2013).

Student's ante litem notice stating that the amount of the student's full loss was unknown because the student was still incurring medical bills and did not know the full extent of the student's injury, met the requirement in O.C.G.A. § 50-21-26(a)(5)(E) that the student state the amount of the loss to the extent known. *Myers v. Bd. of Regents of the Univ. Sys. of Ga.*, 324 Ga. App. 685, 751 S.E.2d 490 (2013).

**Cited in** *Hartley v. Agnes Scott College*, 295 Ga. 458, 759 S.E.2d 857 (2014).



## 50-21-27. Retroactive operation; limitations of actions; applicability of other related statutes.

### JUDICIAL DECISIONS

**Tolling under § 9-3-99 did not apply to state entities that were not charged with a crime.** — Two-year statute of limitations for actions against the state, O.C.G.A. § 50-21-27(c), was not tolled under O.C.G.A. § 9-3-99 by a pending vehicle citation against the driver of the state's van because the survivor did not file suit against the driver, but only filed suit against the two state entities, neither of which was ever charged with any crime. *Orr v. River Edge Cmty. Serv. Bd.*, 331 Ga. App. 228, 770 S.E.2d 308 (2015).

**Construction with tolling provision of O.C.G.A. § 36-33-5(d).** — The tolling provision of O.C.G.A. § 36-33-5(d) cannot be harmonized with the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., and, thus, has no application to suits brought pursuant to the GTCA, not-

withstanding the language of O.C.G.A. § 50-21-27(e). *Ga. Reg'l Transp. Auth. v. Foster*, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

In a suit against a state transit authority, the trial court erred by denying the authority's motion for judgment on the pleadings because the passenger's suit was time-barred since the suit was filed after the running of the two-year statute of limitation applicable to tort claims brought against the state pursuant to the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq.; O.C.G.A. § 50-21-27(c) and the tolling provision of O.C.G.A. § 36-33-5(d) could not be harmonized with the GTCA and, thus, had no application. *Ga. Reg'l Transp. Auth. v. Foster*, 329 Ga. App. 258, 764 S.E.2d 862 (2014).

## 50-21-28. Venue of actions.

### JUDICIAL DECISIONS

**Cited in** *Ga. Dep't of Human Servs. v. Dougherty County*, 330 Ga. App. 581, 768 S.E.2d 771 (2015); *Bd. of Regents of the*

*Univ. Sys. of Ga. v. Winter*, 331 Ga. App. 528, 771 S.E.2d 201 (2015).

## 50-21-35. Service of process; mailing of complaint.

### JUDICIAL DECISIONS

**Cited in** *Hartley v. Agnes Scott College*, 295 Ga. 458, 759 S.E.2d 857 (2014).

## 50-21-36. Settlement of claims.

### JUDICIAL DECISIONS

**Cited in** *Shekhawat v. Jones*, 293 Ga. 468, 746 S.E.2d 89 (2013).



## CHAPTER 25

## GEORGIA TECHNOLOGY AUTHORITY

Sec.

50-25-7.1. Technology empowerment fund; appropriations; initiatives; steering committee.

**50-25-7.1. Technology empowerment fund; appropriations; initiatives; steering committee.**

(a) The authority is authorized and directed to establish a technology empowerment fund to be administered by the authority. The fund shall consist of such moneys appropriated or otherwise available to the authority as the board may determine from time to time to deposit therein. Subject to the appropriations process, the decision-making and priority-setting responsibilities for allocating these funds are vested in the chief information officer and the director of the Office of Planning and Budget.

(b) The chief information officer is authorized to identify and select individual projects, initiatives, and systems to improve service delivery to be funded through the technology empowerment fund. Such projects shall demonstrate, to the satisfaction of the chief information officer, reduced costs through the use of technology. In identification and selection of such projects, initiatives, and systems, the chief information officer shall give priority to those which provide demonstrable cost savings and improved service delivery on a recurring basis through the employment of technology and training. Eligible projects, initiatives, and systems to receive disbursements from the technology empowerment fund may be selected from agency budget requests. Quarterly reports of the operations of the technology empowerment fund shall be required to be made to the board, the Office of Planning and Budget, the Senate Budget and Evaluation Office, and the House Budget and Research Office to ensure proper oversight and accountability.

(c) Each project or initiative developed and supported from the technology empowerment fund shall employ technology that is compatible with the architecture and standards established by the authority and shall be accounted for by a discrete account established for the individual project or initiative item in the operating budget and capital budget.

(d) A steering committee composed of the chairperson of the House Committee on Appropriations or his or her designee from among the membership of the committee, the chairperson of the Senate Appropriations Committee or his or her designee from among the membership of



the committee, the director of the Office of Planning and Budget, the House Budget and Research Office, the Senate Budget and Evaluation Office, the state auditor, and a representative from the Governor’s office shall advise and consult with the chief information officer regarding initiatives to receive funding from the technology empowerment fund and shall receive quarterly reports from the chief information officer as to the status of funded projects. (Code 1981, § 50-25-7.1, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2008, p. VO1, § 1-21/HB 529; Ga. L. 2014, p. 866, § 50/SB 340.)

**The 2014 amendment**, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “Senate Budget and Evaluation Office” for “Senate Budget Office” and substituted “House Budget and Research Office” for

“House Budget Office” in subsections (b) and (d) and substituted “House Committee on Appropriations” for “House Appropriations Committee” near the beginning of subsection (d).

CHAPTER 27

LOTTERY FOR EDUCATION

<b>Article 3</b>		Sec.	
<b>Bona Fide Coin Operated Amusement Machines</b>		50-27-84.	Limitation on percent of monthly gross retail receipts derived from machines; monthly verified reports; issuance of fine or revocation or suspension of license for violations; submission of electronic reports.
<b>PART 1</b>		50-27-87.	Master licenses; requirements and restrictions for licensees.
<b>GENERAL PROVISIONS</b>		50-27-87.1.	Unfair methods of competition; unfair and deceptive acts.
Sec.		<b>PART 2</b>	
50-27-70.	Legislative findings; definitions.	<b>CLASS B ACCOUNTING TERMINALS</b>	
50-27-71.	License fees; issuance of license; display of license; control number; duplicate certificates; application for license or renewal; penalty for non-compliance.	50-27-102.	Role of corporation; implementation and certification; separation of funds and accounting; disputes.
50-27-72.	Refund of license.		
50-27-73.	Refusal to issue or renew license; revocation or suspension; hearing; limitation on issuance of licenses.		
50-27-78.	Payment and collection of annual permit fee; permit stickers; treatment of fees.		



## ARTICLE 1

## GENERAL PROVISIONS

**50-27-1. Short title.**

**Law reviews.** — For article, “State Government: Lottery for Education,” see 30 Ga. St. U.L. Rev. 257 (2013).

**50-27-9. General powers of corporation.**

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

**50-27-21. Preservation of lottery proceeds by retailers; accounting procedures; preference accorded proceeds of insolvent retailers.**

## JUDICIAL DECISIONS

**Fiduciary duty.**

Chapter 7 debtor’s breach of the debtor’s fiduciary duties under Georgia law as the officer of a lottery retailer was grounds for denying a discharge of an amount due as a defalcation while acting in a fiduciary capacity. However, summary judgment was only granted in favor of the creditor with respect to the first week for which the debtor failed to account for and remit

proceeds, based on the debtor’s allegation that the debtor was locked out of the debtor’s business property by the debtor’s landlord and was thus unable to deposit the lottery proceeds or access the remaining lottery tickets left on the premises in subsequent weeks. *Ga. Lottery Corp. v. Carter (In re Carter)*, No. 14-5212, 2015 Bankr. LEXIS 910 (Bankr. N.D. Ga. Mar. 4, 2015).

**50-27-27. Penalty for falsely making, altering, forging, uttering, passing, or counterfeiting ticket; penalty for attempting to influence winning of prize.**

**Law reviews.** — For article, “State Government: Lottery for Education,” see 30 Ga. St. U.L. Rev. 257 (2013).



## ARTICLE 3

## BONA FIDE COIN OPERATED AMUSEMENT MACHINES

## PART 1

## GENERAL PROVISIONS

**50-27-70. Legislative findings; definitions.**

(a) The General Assembly finds that the ability to operate a bona fide coin operated amusement machine business in this state constitutes a privilege and not a right. Further, in order to prevent the unregulated operation of the bona fide coin operated amusement machine business, the General Assembly is enacting the procedural enhancements of this article which will aid in the enforcement of the tax obligations that arise from the operation of bona fide coin operated amusement machine businesses as well as prevent unauthorized cash payouts. The General Assembly finds that the bona fide coin operated amusement machine business can be conducted in a manner to safeguard the fiscal soundness of the state, enhance public welfare, and support the need to educate Georgia's children through the HOPE scholarship program and pre-kindergarten funding authorized by Article I, Section II, Paragraph VIII of the Constitution.

(b) As used in this article, the term:

(1) "Applicant" or "licensee" means an owner, including an owner's officers, directors, shareholders, individuals, members of any association or other entity not specified, and, when applicable in context, the business entity itself.

(2)(A) "Bona fide coin operated amusement machine" means every machine of any kind or character used by the public to provide amusement or entertainment whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, card, or similar object and the result of whose operation depends in whole or in part upon the skill of the player, whether or not it affords an award to a successful player pursuant to subsections (b) through (g) of Code Section 16-12-35, and which can be legally shipped interstate according to federal law. Examples of bona fide coin operated amusement machines include, but are expressly not limited to, the following:

- (i) Pinball machines;
- (ii) Console machines;
- (iii) Video games;



- (iv) Crane machines;
- (v) Claw machines;
- (vi) Pusher machines;
- (vii) Bowling machines;
- (viii) Novelty arcade games;
- (ix) Foosball or table soccer machines;
- (x) Miniature racetrack, football, or golf machines;
- (xi) Target or shooting gallery machines;
- (xii) Basketball machines;
- (xiii) Shuffleboard games;
- (xiv) Kiddie ride games;
- (xv) Skeeball machines;
- (xvi) Air hockey machines;
- (xvii) Roll down machines;
- (xviii) Trivia machines;
- (xix) Laser games;
- (xx) Simulator games;
- (xxi) Virtual reality machines;
- (xxii) Maze games;
- (xxiii) Racing games;
- (xxiv) Coin operated pool tables or coin operated billiard tables as defined in paragraph (3) of Code Section 43-8-1; and
- (xxv) Any other similar amusement machine which can be legally operated in Georgia.

The term also means a machine of any kind or character used by the public to provide music whose operation requires the payment of or the insertion of a coin, bill, other money, token, ticket, card, or similar object such as jukeboxes or other similar types of music machines.

(B) The term “bona fide coin operated amusement machine” does not include the following:

- (i) Coin operated washing machines or dryers;



- (ii) Vending machines which for payment of money dispense products or services;
- (iii) Gas and electric meters;
- (iv) Pay telephones;
- (v) Pay toilets;
- (vi) Cigarette vending machines;
- (vii) Coin operated scales;
- (viii) Coin operated gumball machines;
- (ix) Coin operated parking meters;
- (x) Coin operated television sets which provide cable or network programming;
- (xi) Coin operated massage beds; and
- (xii) Machines which are not legally permitted to be operated in Georgia.

(3) "Class A machine" means a bona fide coin operated amusement machine that is not a Class B machine, does not allow a successful player to carry over points won on one play to a subsequent play or plays, and:

- (A) Provides no reward to a successful player;
- (B) Rewards a successful player only with free replays or additional time to play;
- (C) Rewards a successful player with noncash merchandise, prizes, toys, gift certificates, or novelties in compliance with the provisions of subsection (c) or paragraph (1) of subsection (d) of Code Section 16-12-35, and does not reward a successful player with any item prohibited as a reward in subsection (i) of Code Section 16-12-35 or any reward redeemable as an item prohibited as a reward in subsection (i) of Code Section 16-12-35;
- (D) Rewards a successful player with points, tokens, tickets, or other evidence of winnings that may be exchanged only for items listed in subparagraph (C) of this paragraph; or
- (E) Rewards a successful player with any combination of items listed in subparagraphs (B), (C), and (D) of this paragraph.

(4) "Class B machine" means a bona fide coin operated amusement machine that allows a successful player to accrue points on the machine and carry over points won on one play to a subsequent play



or plays in accordance with paragraph (2) of subsection (d) of Code Section 16-12-35 and:

(A) Rewards a successful player in compliance with the provisions of paragraphs (1) and (2) of subsection (d) of Code Section 16-12-35; and

(B) Does not reward a successful player with any item prohibited as a reward in subsection (i) of Code Section 16-12-35 or any reward redeemable as an item prohibited as a reward in subsection (i) of Code Section 16-12-35.

(5) "Distributor" means a person, individual, partnership, corporation, limited liability company, or any other business entity that buys, sells, or distributes Class B machines to or from operators.

(6) "Location license" means the initial and annually renewed license which every location owner or location operator must purchase and display in the location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally any such machine in this state.

(7) "Location license fee" means the fee paid to obtain the location license.

(8) "Location owner or location operator" means an owner or operator of a business where one or more bona fide coin operated amusement machines are available for commercial use and play by the public.

(9) "Manufacturer" means a person, individual, partnership, corporation, limited liability company, or any other business entity that supplies and sells major components or parts, including software, hardware, or both, to Class B machine distributors or operators.

(10) "Master license" means the certificate which every owner of a bona fide coin operated amusement machine must purchase and display in the owner's or operator's place of business where the machine is located for commercial use by the public for play in order to legally operate the machine in the state.

(10.1) "Master licensee" means any person that has lawfully applied for and received a master license.

(11) "Net receipts" means the entire amount of moneys received from the public for play of an amusement machine, minus the amount of expenses for noncash redemption of winnings from the amusement machine, and minus the amount of moneys refunded to the public for bona fide malfunctions of the amusement machine.



(12) "Operator" means any person, individual, firm, company, association, corporation, or other business entity that exhibits, displays, or permits to be exhibited or displayed, in a place of business other than his own, any bona fide coin operated amusement machine in this state.

(13) "Owner" means any person, individual, firm, company, association, corporation, or other business entity owning any bona fide coin operated amusement machine in this state.

(14) "Permit fee" means the annual per machine charge which every owner of a bona fide coin operated amusement machine in commercial use must purchase and display in either the owner's or operator's place of business in order to legally operate the machine in the state.

(15) "Person" means an individual, any corporate entity or form authorized by law including any of its subsidiaries or affiliates, or any officer, director, board member, or employee of any corporate entity or form authorized by law.

(16) "Single play" or "one play" means the completion of a sequence of a game, or replay of a game, where the player receives a score and from the score the player can secure free replays, merchandise, points, tokens, vouchers, tickets, cards, or other evidence of winnings as set forth in subsection (c) or (d) of Code Section 16-12-35. A player may, but is not required to, exchange a score for rewards permitted by subparagraphs (d)(1)(A) through (d)(1)(D) of Code Section 16-12-35 after each play.

(17) "Slot machine or any simulation or variation thereof" means any contrivance which, for a consideration, affords the player an opportunity to obtain money or other thing of value, the award of which is determined solely by chance, whether or not a prize is automatically paid by the contrivance.

(18) "Sticker" means the decal issued for every bona fide coin operated amusement machine to show proof of payment of the permit fee.

(19) "Successful player" means an individual who wins on one or more plays of a bona fide coin operated amusement machine.

(20) "Temporary location permit" means the permit which every location owner or location operator must purchase and display in the location where one or more bona fide coin operated amusement machines are available for commercial use by the public for play in order to operate legally the machine or machines in this state for seven days or less. Such temporary location permits shall be subject to the same regulations and conditions as location licenses. (Code



1981, § 48-17-1, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1995, p. 10, § 48; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 563, § 2; Ga. L. 1999, p. 1223, § 1; Ga. L. 2001, Ex. Sess., p. 312, § 3; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 9, § 1-88/HB 1055; Ga. L. 2010, p. 470, § 1/SB 454; Ga. L. 2012, p. 1136, § 3/SB 431; Code 1981, § 50-27-70, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2015, p. 39, § 1/SB 190.)

**The 2014 amendment**, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised language in subparagraph (b)(2)(A).

**The 2015 amendment**, effective July 1, 2015, added paragraph (b)(10.1).

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this

Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

## JUDICIAL DECISIONS

**Statute did not void preexisting contracts.** — In a suit for tortious interference with contractual relations, the trial court erred by granting partial summary judgment against the owners of coin-operated amusement machines be-

cause O.C.G.A. § 50-27-70 et seq. did not void preexisting contracts and it was error to interpret the statute otherwise. *All Star, Inc. v. Ga. Atlanta Amusements, LLC*, 770 S.E.2d 22, 2015 Ga. App. LEXIS 206 (2015).

## **50-27-71. License fees; issuance of license; display of license; control number; duplicate certificates; application for license or renewal; penalty for noncompliance.**

(a) Every manufacturer, distributor, and owner, except an owner holding a bona fide coin operated amusement machine solely for personal use or resale, who offers a bona fide coin operated amusement machine for sale to a distributor or to an owner and who offers others the opportunity to play for a charge, whether directly or indirectly, any bona fide coin operated amusement machine shall pay annual master license fees to the corporation as follows:

(1) For Class A machines:

(A) For five or fewer machines, the owner shall pay a master license fee of \$500.00.



In the event such owner acquires a sixth or greater number of machines during a calendar year which requires a certificate for lawful operation under this article so that the total number of machines owned does not exceed 60 machines or more, such owner shall pay an additional master license fee of \$1,500.00;

(B) For six or more machines but not more than 60 machines, the owner shall pay a master license fee of \$2,000.00. In the event such owner acquires a sixty-first or greater number of machines during a calendar year which requires a certificate for lawful operation under this article, such owner shall pay an additional master license fee of \$1,500.00; or

(C) For 61 or more machines, the owner shall pay a master license fee of \$3,500.00;

(2) For any number of Class B machines, the owner shall pay a master license fee of \$5,000.00;

(3) For any distributor, the distributor shall pay a distributor license fee of \$5,000.00; and

(4) For any manufacturer, the manufacturer shall pay a manufacturer license fee of \$5,000.00.

The cost of the license shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon such payment, the corporation shall issue a master license certificate to the owner. The license fees levied by this Code section shall be collected by the corporation on an annual basis, and the board may establish procedures for license collection and set due dates for these license payments. No refund or credit of the license charge levied by this Code section may be allowed to any owner who ceases the manufacture, distribution, or operation of bona fide coin operated amusement machines prior to the end of any license or permit period.

(a.1) Every location owner or location operator shall pay an annual location license fee for each bona fide coin operated amusement machine offered to the public for play. The annual location license fee shall be \$25.00 for each Class A machine and \$125.00 for each Class B machine. The annual location license fee levied by this Code section shall be collected by the corporation, and the board may establish procedures for location license fee collection and set due dates for payment of such fees. The location license fee shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon payment, the corporation shall issue a location license certificate that shall state the number of bona fide coin operated amusement machines



permitted for each class without further description or identification of specific machines. No refund or credit of the location license fee shall be allowed to any location owner or location operator who ceases to offer bona fide coin operated amusement machines to the public for commercial use prior the end of any license period.

(a.2) The corporation may refuse to issue or renew a location owner or location operator license or may revoke or suspend a location owner or location operator license issued under this article if:

(1) The licensee or applicant has intentionally violated a provision of this chapter or a regulation promulgated under this chapter;

(2) The licensee or applicant has intentionally failed to provide requested information or answer a question, intentionally made a false statement in or in connection with his or her application or renewal, or omitted any material or requested information;

(3) The licensee or applicant used coercion to accomplish a purpose or to engage in conduct regulated by the corporation;

(4) Failure to revoke or suspend the license would be contrary to the intent and purpose of this article;

(5) The licensee or applicant has engaged in unfair methods of competition and unfair or deceptive acts or practices as provided in Code Section 50-27-87.1; or

(6) Any applicant, or any person, firm, corporation, legal entity, or organization having any interest in any operation for which an application has been submitted, fails to meet any obligations imposed by the tax laws or other laws or regulations of this state.

(b) A copy of an owner's master license and the location owner's or location operator's location license shall be prominently displayed at all locations where the owner and location owner or location operator have bona fide coin operated amusement machines available for commercial use and for play by the public to evidence the payment of the fees levied under this Code section. A manufacturer's license and distributor's license, as well as invoices for the sales of any Class B machines to any person or entity licensed by this chapter, shall be available for inspection at their places of business and upon request from the corporation.

(c) Each manufacturer, distributor, and master license and each location license shall list the name and address of the manufacturer, distributor, owner, location owner, or location operator, as applicable.

(d) The corporation may provide a duplicate license issued pursuant to this Code section if the original license has been lost, stolen, or destroyed. The fee for a duplicate original license is \$100.00. If the original license is lost, stolen, or destroyed, a sworn, written statement



must be submitted explaining the circumstances by which the license was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed license, if applicable, before a duplicate original license can be issued. A license for which a duplicate license has been issued is void.

(e) A license or permit issued under this Code section:

(1) Is effective for a single business entity;

(2) Vests no property or right in the holder of the license or permit except to conduct the licensed or permitted business during the period the license or permit is in effect;

(3) Except as provided in paragraph (5) of this subsection, is nontransferable, nonassignable by and between owners or location owners and location operators, and not subject to execution;

(4) Expires upon the death of an individual holder of a license or permit or upon the dissolution of any other holder of a license or permit; and

(5) As it relates to a master licensee, upon the sale of a master licensee's business in its entirety, the buyer shall pay to the corporation a transfer fee for the master license that accompanies the business in the following amounts:

(A) For the first sale of a master licensee's business, a transfer fee for the master license in the amount of \$10,000.00;

(B) For the second sale of such business, a transfer fee for the master license in the amount of \$25,000.00;

(C) For the third sale of such business, a transfer fee for the master license in the amount of \$50,000.00; and

(D) For the fourth sale of such business and each sale thereafter, a transfer fee for the master license in an amount to be established by the corporation, which transfer fee shall be not less than \$50,000.00.

(f) An application for the renewal of a license or permit must be made to the corporation in accordance with the due dates set forth in the rules promulgated by the board each year.

(g) Acceptance of a license or permit issued under this Code section constitutes consent by the licensee and the location owner or location operator of the business where bona fide coin operated amusement machines are available for commercial use and for play by the public that the corporation's agents may freely enter the business premises where the licensed and permitted machines are located during normal business hours for the purpose of ensuring compliance with this article.



(h) An application for a license or permit to do business under this article shall contain a complete statement regarding the ownership of the business to be licensed or the business where the permitted machines are to be located. This statement of ownership shall specify the same information that is required by the application to secure a sales tax number for the State of Georgia.

(i) An application for a master license shall be accompanied by either the annual or semiannual fee plus the required permit fee due for each machine. Additional per machine permits can be purchased during the year if needed by the owner. An application for a location license shall be accompanied by the appropriate fee.

(j) An application is subject to public inspection.

(k) A renewal application filed on or after the due dates set forth in the rules promulgated by the board, but before the license expires, shall be accompanied by a nonrefundable late fee of \$1,000.00. A manufacturer, distributor, or master license or location license that has been expired for more than 90 days may not be renewed. In such a case, the manufacturer, distributor, master license, or location license owner shall obtain a new license, as applicable, by complying with the requirements and procedures for obtaining an original license.

(l) A holder of a license who properly completes the application and remits all fees with it by the due date may continue to manufacture, distribute, or operate bona fide coin operated amusement machines after the expiration date if its license or permit renewal has not been issued, unless the holder of the license is notified by the corporation prior to the expiration date of a problem with the renewal.

(m) Holders of manufacturer, distributor, and location licenses and temporary location permits shall be subject to the same provisions of this article with regard to refunds, license renewals, license suspensions, and license revocations as are master licensees.

(n) Failure to obtain a license as required by this Code section shall subject the person to a fine of up to \$25,000.00 and repayment of all fees or receipts due to the corporation pursuant to this article and may subject the person to a loss of all state licenses. (Code 1981, § 48-17-2, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2010, p. 9, § 1-89/HB 1055; Ga. L. 2010, p. 470, § 2/SB 454; Code 1981, § 50-27-71, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 2/SB 190.)

**The 2015 amendment**, effective July 1, 2015, in subsection (a), in the introductory language, inserted “manufacturer, distributor, and” near the beginning, and inserted “a bona fide coin operated amuse-

ment machine for sale to a distributor or to an owner and who offers” near the middle, in paragraph (1), substituted “requires” for “require” in subparagraphs (1)(A) and (1)(B), and deleted “and” at the



end of subparagraph (1)(C), added paragraphs (3) and (4), and, in the undesignated language at the end of subsection (a), substituted “The license fees levied by this Code section shall be collected by the corporation on an annual basis, and the board may establish procedures for license collection and set due dates for these license payments.” for “The master license fee levied by this Code section shall be collected by the corporation on an annual basis for the period from July 1 to June 30. The board may establish procedures for master license collection and set due dates for these license payments.” near the middle, and deleted “master” preceding “license charge” and inserted “manufacture, distribution, or” in the last sentence; in subsection (a.1), substituted “, and the board may establish procedures for location license fee collection and set due dates for payment of such fees” for “on an annual basis from July 1 to June 30” at the end of the third sentence, and deleted the former sixth sentence, which read: “The board may establish procedures for location license fee collection and set due dates for payment of such fees.”; in subsection (b), added the last sentence; in subsection (c), inserted “manufacturer, distributor, and” near the beginning and substituted “manufacturer, distributor, owner, location owner, or location operator” for “owner or location owner or location operator”; in subsection (d), substituted “license” for “certificate” throughout, and substituted “duplicate license issued pursuant to this Code section” for “duplicate original master license certificate or location license certificate” in the first sentence; in subsection (e), in paragraph (3), substituted “Except as provided in paragraph (5) of this subsection, is” for “Is” at the beginning, and deleted “and” at the end, at the end of paragraph (4), substituted “; and” for the period, and added paragraph (5); in subsection (f), substituted “in accordance with the due dates set forth in the rules promulgated

by the board” for “by June 1 of”; substituted the present provisions of subsection (k) for the former provisions, which read: “A renewal application filed on or after July 1, but before the license expires, shall be accompanied by a late fee of \$125.00. A master license or location license that has been expired for more than 90 days may not be renewed. In such a case, the owner shall obtain a new master license or the location owner or location operator shall obtain a new location license, as applicable, by complying with the requirements and procedures for obtaining an original master license or location license.”; in subsection (l), inserted “manufacture, distribute, or”; in subsection (m), inserted “manufacturer, distributor, and” near the beginning and substituted “master licensees” for “holders of master licenses”; and, in subsection (n), near the beginning, deleted “master license or location” following “Failure to obtain a”.

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

## 50-27-72. Refund of license.

(a) No refund is allowed for a manufacturer, distributor, or master license except as follows:



(1) The licensee makes a written request to the corporation for a refund prior to the beginning of the calendar year for which it was purchased;

(2) The licensee makes a written request prior to the issuance of the license or registration certificate;

(3) The licensee makes a written request for a refund claiming the license or registration certificate was mistakenly purchased due to reliance on incorrect information from the corporation;

(4) The processing of the license is discontinued; or

(5) The issuance of the license is denied.

(b) Before a refund will be allowed if the renewal of a master license is denied, the corporation shall verify that the applicant has no machines in operation and does not possess any machines except those that are exempt from the fees. If a master license is not issued, the corporation may retain \$100.00 to cover administrative costs.

(c) No refund will be allowed if the owner has an existing liability for any other fees or taxes due. Any refund will be applied to the existing liability due. (Code 1981, § 48-17-3, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-72, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 3/SB 190.)

**The 2015 amendment**, effective July 1, 2015, in subsection (a), substituted “licensee” for “owner” throughout, deleted “master” preceding “license” throughout, and inserted “manufacturer, distributor, or” in the introductory language.

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this

Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### **50-27-73. Refusal to issue or renew license; revocation or suspension; hearing; limitation on issuance of licenses.**

(a) The corporation shall not renew a license for a person under this article and shall suspend for any period of time or cancel a license if the corporation finds that the applicant or licensee is indebted to the state for any fees, costs, penalties, or delinquent fees.



(b) The corporation shall not issue or renew a license for a person under this article if the applicant does not designate and maintain an office in this state or if the applicant does not permit inspection by the corporation's agents of his or her place of business or of all records which the applicant or licensee is required to maintain; provided, however, that this subsection shall not apply to manufacturers.

(c) The corporation may refuse to issue or renew a manufacturer, distributor, or master license or may revoke or suspend a manufacturer, distributor, or master license issued under this chapter if:

(1) The licensee or applicant has intentionally violated a provision of this chapter or a regulation promulgated under this chapter;

(2) The licensee or applicant has intentionally failed to provide requested information or answer a question, intentionally made a false statement in or in connection with his or her application or renewal, or omitted any material or requested information;

(3) The licensee or applicant used coercion to accomplish a purpose or to engage in conduct regulated by the corporation;

(4) A master licensee or applicant allows the use of its master license certificate or per machine permit stickers by any other business entity or person that owns or operates bona fide coin operated amusement machines available for commercial use and available to the public for play. If such unauthorized use occurs, the corporation may fine the licensee as follows:

(A) One thousand dollars for each improper use of a per machine permit sticker; and

(B) Twenty-five thousand dollars for each improper use of a master license certificate.

In addition, the corporation is authorized to seize the machines in question and assess the master license and permit fees as required by law and to assess the costs of such seizure to the owner or operator of the machines;

(5) Failure to suspend or revoke the license would be contrary to the intent and purpose of this article;

(6) The licensee or applicant has engaged in unfair methods of competition and unfair or deceptive acts or practices as provided in Code Section 50-27-87.1; or

(7) Any applicant, or any person, firm, corporation, legal entity, or organization having any interest in any operation for which an application has been submitted, fails to meet any obligations imposed by the tax laws or other laws or regulations of this state.



(d) The corporation, on the request of a licensee or applicant for a license, shall conduct a hearing to ascertain whether a licensee or applicant for a license has engaged in conduct which would be grounds for revocation, suspension, or refusal to issue or renew a license.

(e) Effective July 1, 2015, the corporation may issue up to 220 Class B master licenses through a process of competitive auction to be established by the corporation and such competitive auction shall occur at least once every three years effective July 1, 2015; provided, however, that any person or entity holding a Class B master license on the effective date of this subsection shall not be subject to the competitive auction process provided for in this Code section but shall be subject to all other requirements of this article; provided, further, that the corporation shall be permitted to renew Class B master licenses at any time. (Code 1981, § 48-17-4, enacted by Ga. L. 1992, p. 1521, § 3; Code 1981, § 50-27-73, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 39, § 4/SB 190.)

**The 2015 amendment**, effective July 1, 2015, substituted the present provisions of subsection (a) for the former provisions, which read: “The corporation shall not renew a master, location owner, or location operator license for a business under this article and shall suspend for any period of time or cancel a master, location owner, or location operator license if the corporation finds that the applicant or licensee is indebted to the state for any fees, costs, penalties, or delinquent fees.”; in subsection (b), substituted “person” for “business” preceding “under this article” near the beginning, and added the proviso at the end; in subsection (c), inserted “manufacturer, distributor, or” twice in the introductory language, and, in the first sentence of paragraph (4), inserted “master” near the beginning and substituted “person that owns” for “person who owns” near the middle; and substituted the present provisions of subsection (e) for the former provisions, which read: “The corporation shall not issue any new Class B master licenses until one year after it certifies that the Class B accounting terminal authorized by Code Section 50-27-101 is im-

plemented; provided, however, the corporation shall be permitted to renew Class B master licenses at any time.”

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.



**50-27-74. Right to notice and hearing; service of notice; establishment of procedures.**

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

**50-27-75. Delivery of order refusing application or imposing sanction.**

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

**50-27-76. Judicial review of action by corporation or chief executive officer.**

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.



**50-27-77. Appeal from superior court.**

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

**50-27-78. Payment and collection of annual permit fee; permit stickers; treatment of fees.**

(a) Every owner, except an owner holding a coin operated amusement machine solely for personal use or resale, who offers others the opportunity to play for a charge, whether direct or indirect, any bona fide coin operated amusement machine shall pay an annual permit fee for each bona fide coin operated amusement machine in the amount of \$25.00 for each Class A machine and \$125.00 for each Class B machine. The fee shall be paid to the corporation by company check, cash, cashier's check, money order, or any other method approved by the chief executive officer. Upon payment, the corporation shall issue a sticker for each bona fide coin operated amusement machine. The board may establish procedures for annual collection and set due dates for the fee payments. No refund or credit of the annual fee levied by this article shall be allowed to any owner who ceases the exhibition or display of any bona fide coin operated amusement machine prior to the end of any license or permit period.

(b) The sticker issued by the corporation to evidence the payment of the fee under this Code section shall be securely attached to the machine. Owners may transfer stickers from one machine to another in the same class and from location to location so long as all machines in commercial use available for play by the public have a sticker of the correct class and the owner uses the stickers only for machines that it owns.

(c) Each permit sticker shall not list the name of the owner but shall have a control number which corresponds with the control number issued on the master license certificate to allow for effective monitoring of the licensing and permit system. Permit stickers are only required for bona fide coin operated amusement machines in commercial use available to the public for play at a location.



(d) The corporation may provide a duplicate permit sticker if a valid permit sticker has been lost, stolen, or destroyed. The fee for a duplicate permit sticker shall be \$50.00. If a permit sticker is lost, stolen, or destroyed, a sworn, written statement must be submitted explaining the circumstances by which the permit sticker was lost, stolen, or destroyed and including the number of the lost, stolen, or destroyed permit before a replacement permit can be issued. A permit for which a duplicate permit sticker has been issued is void.

(e) Each permit sticker issued for a bona fide coin operated amusement machine which rewards a winning player exclusively with free replays, noncash redemption merchandise, prizes, toys, gift certificates, or novelties; or points, tokens, tickets, cards, or other evidence of winnings that may be exchanged for free replays or noncash redemption merchandise, prizes, toys, gift certificates, or novelties, in accordance with the provisions of subsections (b) through (d) of Code Section 16-12-35 shall include the following: "GEORGIA LAW PROHIBITS THE PAYMENT OR RECEIPT OF ANY MONEY FOR REPLAYS OR MERCHANDISE AWARDED FOR PLAYING THIS MACHINE. O.C.G.A. SECTION 16-12-35."

(f) The corporation shall not assess any fees that are not explicitly authorized under this article on a manufacturer, distributor, operator, location owner, or location operator.

(g) All fees assessed by the corporation pursuant to this article shall be considered proceeds derived from a lottery operated on or on behalf of the state and shall not be remitted to the general fund pursuant to Article I, Section II, Paragraph VIII(c) of the Constitution. (Code 1981, § 48-17-9, enacted by Ga. L. 1992, p. 1521, § 3; Ga. L. 1994, p. 834, § 2; Ga. L. 1998, p. 563, § 5; Ga. L. 2010, p. 9, § 1-90/HB 1055; Ga. L. 2010, p. 470, § 3/SB 454; Code 1981, § 50-27-78, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 5/SB 190.)

**The 2015 amendment**, effective July 1, 2015, deleted the former fourth sentence in subsection (a), which read: "The annual fees levied by this article shall be collected by the corporation on an annual basis for the period from July 1 to June 30."

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the excep-

tion of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohib-



ited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### 50-27-79. Refund of annual permit fee.

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### 50-27-80. Permit fees for additional machines; penalty fee.

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### 50-27-81. Administration of article.

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.



**50-27-82. Criminal violations; investigations; seizure and confiscation of machines; repossession; sealing of machines.**

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

**50-27-83. Validity of prior existing obligations to state.**

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

**50-27-84. Limitation on percent of monthly gross retail receipts derived from machines; monthly verified reports; issuance of fine or revocation or suspension of license for violations; submission of electronic reports.**

(a) As used in this Code section, the term:

(1) “Amusement or recreational establishment” means an open-air establishment frequented by the public for amusement or recreation. Such an establishment shall be in a licensed fixed location located in this state and which has been in operation for at least 35 years.

(2) “Business location” means any structure, vehicle, or establishment where a business is conducted.

(3) “Gross retail receipts” means the total revenue derived by a business at any one business location from the sale of goods and services and the commission earned at any one business location on



the sale of goods and services but shall not include revenue from the sale of goods or services for which the business will receive only a commission. Revenue from the sale of goods and services at wholesale shall not be included.

(b)(1) No location owner or location operator shall derive more than 50 percent of such location owner's or location operator's monthly gross retail receipts for the business location in which the Class B machine or machines are situated from such Class B machines; provided, however, that revenues that are due to a master licensee or the corporation shall not be deemed revenue derived from Class B machines.

(2) No location owner or location operator shall offer more than nine Class B machines to the public for play in the same business location; provided, however, that this limitation shall not apply to an amusement or recreational establishment.

(c) For each business location which offers to the public one or more Class B machines, the location owner or location operator shall prepare a monthly verified report setting out separately by location in Georgia:

- (1) The gross receipts from the Class B machines;
- (2) The gross retail receipts for the business location; and
- (3) The net receipts of the Class B machines.

(c.1) Each person holding a Class B master license shall prepare a monthly verified report setting out separately by location in Georgia:

- (1) The gross receipts from the Class B machines which the master licensee maintains; and
- (2) The net receipts of the Class B machines.

(d) In accordance with the provisions of Code Section 50-27-73 and the procedures set out in Code Sections 50-27-74 and 50-27-75, the corporation may fine an applicant or holder of a license, refuse to issue or renew a location license or master license, or revoke or suspend a location license or master license for single or repeated violations of subsection (b) of this Code section.

(e) A location owner or location operator shall report the information prescribed in this Code section in the form required by the corporation. Such report shall be submitted in an electronic format approved by the corporation.

(f) Beginning on August 20, 2013, and on the twentieth day of each month thereafter, for the previous month, the reports required by subsections (c) and (c.1) of this Code section shall be supplied to the corporation on forms provided by the corporation, including electronic



means. The corporation shall be authorized to audit any records for any such business location or master licensee subject to this Code section. The corporation may contract with any state agencies to perform the audits authorized by this Code section, and it may contract or enter into a memorandum of understanding with the Department of Revenue to enforce the provisions of this Code section. (Code 1981, § 48-17-15, enacted by Ga. L. 1999, p. 1223, § 2; Ga. L. 2010, p. 470, § 6/SB 454; Code 1981, § 50-27-84, as redesignated by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 6/SB 190.)

**The 2015 amendment**, effective July 1, 2015, in subsection (b), added the proviso at the end of paragraph (b)(1), and substituted “No location” for “Except as authorized by a local ordinance, no location” at the beginning of paragraph (b)(2).

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this

Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### **50-27-85. Penalties for violations by location owners or operators.**

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### **50-27-86. Local government to adopt any combination of a list of ordinance provisions.**

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an

appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this



Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent

that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### **50-27-87. Master licenses; requirements and restrictions for licensees.**

(a)(1) Except as provided in this Code section, a person shall not own, maintain, place, or lease a bona fide coin operated amusement machine unless he or she has a valid master license; provided, however, that a manufacturer or distributor may own a bona fide coin operated amusement machine intended for sale to an operator, master licensee, manufacturer, or distributor.

(2) A master licensee shall only place or lease bona fide coin operated amusement machines for use in Georgia in a licensed location owner’s or location operator’s establishments.

(3) To be eligible as a master licensee, the person shall not have had a gambling license in any state for at least five years prior to obtaining or renewing a Georgia master’s license.

(4) On or after July 1, 2013, no person with or applying for a master license shall have an interest in any manufacturer, distributor, location owner, or location operator in this state. No person with or applying for a manufacturer license shall have an interest in a distributor, master licensee, location owner, or location operator in this state. No person applying for a distributor license shall have an interest in a manufacturer, master licensee, location owner, or location operator in this state. Additionally, no group or association whose membership includes manufacturers, distributors, operators, master licensees, location owners, or location operators shall obtain a master license nor shall they form an entity which acts as a master licensee, operator, location owner, or location operator for the purpose of obtaining a master license; provided, however, that through June 30, 2015, this paragraph shall not apply to persons who, as of December 31, 2013, have or will have continuously possessed a master license for ten or more years and, for ten or more years, have or will have continuously owned or operated a location where a bona fide coin operated machine has been placed. Nothing in this paragraph shall prohibit a manufacturer, distributor, or master licensee from entering into a financing arrangement with the other for the sale of machines, including but not limited to a lien, guaranty, or line of credit.



(5) Failure to adhere to the provisions of this subsection shall result in a fine of not more than \$50,000.00 and loss of the license for a period of one to five years per incident and subject the master licensee to the loss of any other state or local license held by the master licensee. The corporation shall notify any state or federal agency that issues a license to such master licensee of the breach of its duties under this article.

(b)(1) No bona fide coin operated amusement machine, its parts, or software or hardware shall be placed or leased in any location owner's or location operator's establishment except by a master licensee and only if the owner or agent of the location owner or location operator has entered into a written agreement with a master licensee for placement of the bona fide coin operated amusement machine. Beginning on July 1, 2013, no person with or applying for a location owner's or location operator's license shall have an interest in any person or immediate family member of a person with a master license, or doing business as a distributor, or manufacturer in this state. A location owner or location operator may sell a bona fide coin operated amusement machine to anyone except another location owner or location operator. Failure to adhere to this subsection shall result in a fine of not less than \$50,000.00 and loss of the location owner's or location operator's license for a period of one to five years per incident and subject the location owner or location operator to the loss of any other state or local licenses held by the location owner or location operator. The corporation shall notify any state or federal agency that issues a license to such location owner or location operator of the breach of its duties under this article.

(2) A copy of the written agreement shall be on file in the master licensee's and the location owner's and location operator's place of business and available for inspection by individuals authorized by the corporation.

(3) Any written agreement entered into after April 10, 2013, shall be exclusive as between one bona fide coin operated amusement machine master licensee and one location owner or location operator per location. Any agreement entered into before April 10, 2013, shall not be deemed void for failure to allocate revenue pursuant to Code Section 50-27-87.1 or 50-27-102, and notwithstanding any agreements between master licensees and location owners and location operators, both shall act in a manner that complies with this chapter.

(c) No person shall receive a portion of any proceeds or revenue from the operation of a bona fide coin operated amusement machine except the operator, location owner, or location operator, notwithstanding Code Section 50-27-102. No commission or fee shall be awarded for the facilitation of a contract or agreement between a master licensee and a



location owner or location operator; provided, however, that an employee of a master licensee may receive compensation, including a commission, for such agreements or contracts. A master licensee shall not pay a commission or provide anything of value to any person who is an employee, independent contractor, or immediate family member of a location owner or location operator.

(d) This Code section shall only apply to manufacturers, distributors, operators, master licensees, and location owners or location operators of Class B machines. (Code 1981, § 50-27-87, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2014, p. 866, § 50/SB 340; Ga. L. 2015, p. 39, § 7/SB 190.)

**The 2014 amendment**, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “location owner or location operator” for “location owner or location owner” near the end of paragraph (b)(3).

**The 2015 amendment**, effective July 1, 2015, added the second, third, and last sentences in paragraph (a)(4); and added the second sentence in paragraph (b)(3).

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the excep-

tion of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

## JUDICIAL DECISIONS

**Cited in** All Star, Inc. v. Ga. Atlanta Amusements, LLC, 770 S.E.2d 22, 2015 Ga. App. LEXIS 206 (2015).

### 50-27-87.1. Unfair methods of competition; unfair and deceptive acts.

The following acts or practices are deemed unfair methods of competition and unfair and deceptive acts under this article:

(1) Until the corporation certifies that the Class B accounting terminal authorized by Code Section 50-27-101 is implemented, a master licensee, location owner, or location operator retaining more than 50 percent of the net monthly proceeds for the operation of a Class B machine;

(2) A master licensee or owner entering into an agreement with a manufacturer or distributor:



(A) That grants the owner or master licensee exclusive rights to own, maintain, place, or lease a type, model, or brand of bona fide coin operated amusement machine in this state; or

(B) For the lease of a bona fide coin operated amusement machine, its parts, or software or hardware;

(3) A location owner or location operator asking, demanding, or accepting anything of value, including but not limited to a loan or financing arrangement, gift, procurement fee, lease payments, revenue sharing, or payment of license fees or permit fees from a manufacturer, distributor, or master licensee, as an incentive, inducement, or any other consideration to locate bona fide coin operated amusement machines in that establishment. A location owner that violates this subsection shall have all of the location owner's state business licenses revoked for a period of one to five years per incident. The location owner also shall be fined up to \$50,000.00 per incident and required to repay any incentive fees or other payments received from the operator; and

(4) A manufacturer, distributor, operator, master licensee, or individual providing anything of value, including but not limited to a loan or financing arrangement, gift, procurement fee, lease payments, revenue sharing, or payment of license fees or permit fees to a location owner or location operator, as any incentive, inducement, or any other consideration to locate bona fide coin operated amusement machines in that establishment. A manufacturer, distributor, operator, master licensee, or individual who violates this subsection shall have all of his or her state business licenses revoked for a period of one to five years per incident. The individual, manufacturer, distributor, owner, or master licensee also shall be fined up to \$50,000.00 per incident. (Code 1981, § 50-27-87.1, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 8/SB 190.)

**The 2015 amendment**, effective July 1, 2015, in the first sentence of paragraph (3), inserted "manufacturer, distributor, or" preceding "master licensee"; and, in paragraph (4), substituted "A manufacturer, distributor, operator" for "An operator" at the beginning of the first and second sentences, and inserted "manufacturer, distributor," in the last sentence.

**Editor's notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction

if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohib-



ited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### JUDICIAL DECISIONS

**Cited** in *All Star, Inc. v. Ga. Atlanta Amusements, LLC*, 770 S.E.2d 22, 2015 Ga. App. LEXIS 206 (2015).

#### 50-27-88. Establishment of rules and policies; application for license.

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

#### 50-27-89. Bona Fide Coin Operated Amusement Machine Operator Advisory Board; membership; terms; policies and procedures; selection of vendors.

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and

shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

### PART 2

#### CLASS B ACCOUNTING TERMINALS

**Editor’s notes.** — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: “(b) If any section of this Act is determined to be

unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the excep-



tion of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

“(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdic-

tion of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited.” As of July 1, 2015, no such decision has been issued.

**50-27-102. Role of corporation; implementation and certification; separation of funds and accounting; disputes.**

(a) Upon successful implementation and certification of the Class B accounting terminal under the provisions of Code Section 50-27-101, and for the first fiscal year thereafter, the corporation shall:

(1) Retain 5 percent of the net receipts;

(2) Provide, within five business days of receipt, 47.5 percent of the net receipts to the location owner and location operator for the cost associated with allowing the Class B machines to be placed; and

(3) Provide, within five business days of receipt, 47.5 percent of the net receipts to the operator holding the Class B master license for the cost of securing, operating, and monitoring the machines.

(b) In each fiscal year after the implementation and certification required by subsection (a) of this Code Section, the corporation’s share shall increase 1 percent, taken evenly from the location owner or location operator and the operator, to a maximum of 10 percent.

(c) The corporation shall require location owners and location operators to place all bona fide coin operated amusement machine proceeds due the corporation in a segregated account in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the corporation. At the time of such deposit, bona fide coin operated amusement machine proceeds shall be deemed to be the property of the corporation. The corporation may require a location owner or location operator to establish a single separate electronic funds transfer account where available for the purpose of receiving proceeds from Class B machines, making payments to the corporation, and receiving payments for the corporation. Unless otherwise authorized in writing by the corporation, each bona fide coin operated amusement machine location owner or location operator shall establish a separate bank account for bona fide coin operated amusement machine proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets. Whenever any person who receives



proceeds from bona fide coin operated amusement machines becomes insolvent or dies insolvent, the proceeds due the corporation from such person or his or her estate shall have preference over all debts or demands. If any financial obligation to the corporation has not been timely received, the officers, directors, members, partners, or shareholders of the location owner or location operator shall be personally liable for the moneys owed to the corporation.

(d)(1) As a condition of the license issued pursuant to this article, no master licensee or location owner or location operator shall replace or remove a Class A or Class B bona fide coin operated amusement machine from a location until the master licensee and location owner or location operator certify to the corporation that there are no disputes regarding any agreement, distribution of funds, or other claim between the master licensee and location owner or location operator; provided, however, that this certification shall not be required if a master licensee is replacing its own Class A or Class B bona fide coin operated amusement machine at a location. If either the master licensee or location owner or location operator is unable to make the certification required by this Code section, the corporation shall refer the dispute to a hearing officer as set forth in this subsection.

(2) All disputes subject to the provisions of this Code section shall be decided by a hearing officer approved or appointed by the corporation. The corporation shall adopt rules and regulations governing the selection of hearing officers after consultation with the Bona Fide Coin Operated Amusement Machine Operator Advisory Board. Costs of the hearing officer's review, including any hearing set pursuant to this Code Section, shall be shared equally between the parties in the dispute; provided, however, that the corporation shall not be responsible for any of the costs associated with the dispute resolution mechanism set forth in this Code section.

(3) The corporation shall also adopt rules governing the procedure, evidentiary matters, and any prehearing discovery applicable to disputes resolved pursuant to this Code section. Such rules shall be consistent with the Georgia Arbitration Code, and the corporation shall consult the Bona Fide Coin Operated Amusement Machine Operator Advisory Board regarding the procedures or rules adopted pursuant to this subsection. Notwithstanding Code Section 9-9-9, such procedures and rules shall include at least the right of notice to produce books, writings, and other documents or tangible things; depositions; and interrogatories.

(4) If requested by the master licensee or the location owner or location operator, the hearing officer shall conduct a hearing as to the dispute, but in no case shall the hearing officer conduct a hearing



more than 90 days after he or she has been appointed or selected to decide the dispute. No Class B bona fide coin operated amusement machine that is subject to the dispute resolution mechanism required by this Code section shall be removed from the terminal by a master licensee, location owner, or location operator or otherwise prevented by a master licensee, location owner, or location operator from play by the public until a final decision is entered and all appellate rights have been exhausted, or until the master licensee and location owner or location operator agree to a resolution, whichever occurs first.

(5) The decision of the hearing officer may be appealed to the chief executive officer or his or her designee. The chief executive officer shall not reverse a finding of fact of the hearing officer if any evidence supports the hearing officer’s conclusion. The chief executive officer shall not reverse a conclusion of law of the hearing officer unless it was clearly erroneous, arbitrary, and capricious or exceeded the hearing officer’s jurisdiction. The decision of the chief executive officer may be appealed to the Superior Court of Fulton County, which court shall not reverse the chief executive officer’s findings of fact unless it is against the weight of the evidence as set forth in Code Section 5-5-21, and the chief executive officer’s legal conclusions shall not be set aside unless there is an error of law. (Code 1981, § 50-27-102, enacted by Ga. L. 2013, p. 37, § 1-1/HB 487; Ga. L. 2015, p. 39, § 9/SB 190.)

**The 2015 amendment,** effective July 1, 2015, added subsection (d).

JUDICIAL DECISIONS

**Statute did not void pre-existing contracts.** — In a suit for tortious interference with contractual relations, the trial court erred by granting partial summary judgment against the owners of coin-operated amusement machines be-

cause O.C.G.A. § 50-27-70 et seq. did not void preexisting contracts and it was error to interpret the statute otherwise. All Star, Inc. v. Ga. Atlanta Amusements, LLC, 770 S.E.2d 22, 2015 Ga. App. LEXIS 206 (2015).



CHAPTER 32

GEORGIA REGIONAL TRANSPORTATION AUTHORITY

Article 1

General Provisions

Sec.  
50-32-5. Development of the Atlanta re-

gion’s Concept 3 transit proposal; use of federal and state planning funds; assessment of economic benefit and environmental impact.



**Article 2**  
**Jurisdiction**

Sec.

50-32-11. Powers of authority generally.

**ARTICLE 1**

**GENERAL PROVISIONS**

**50-32-5. Development of the Atlanta region's Concept 3 transit proposal; use of federal and state planning funds; assessment of economic benefit and environmental impact.**

The Atlanta Regional Commission in conjunction with the Georgia Regional Transportation Authority and the department's director of planning shall utilize federal and state planning funds to continue the development of the Atlanta region's Concept 3 transit proposal, including assessment of potential economic benefit to the region and the state, prioritization of corridors based on highest potential economic benefit and lowest environmental impact, and completion of environmental permitting. (Code 1981, § 50-32-5, enacted by Ga. L. 2010, p. 778, § 7/HB 277; Ga. L. 2015, p. 385, § 2-10/HB 252.)

**The 2015 amendment**, effective July 1, 2015, rewrote this Code section.

**ARTICLE 2**

**JURISDICTION**

**50-32-11. Powers of authority generally.**

(a) The authority shall have the following general powers:

(1) To sue and be sued in all courts of this state, the original jurisdiction and venue of any such action being the superior court of any county wherein a substantial part of the business was transacted, the tortious act, omission, or injury occurred, or the real property is located, except that venue and jurisdiction for bond validation proceedings shall be as provided by paragraph (9) of subsection (e) of Code Section 50-32-31;

(2) To have a seal and alter the same at its pleasure;

(3) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained



land public transportation systems and other land transportation projects, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction or which are included within an approved transportation plan or transportation improvement program and provide land public transportation services within the geographic jurisdiction of the authority, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes, and to enter into contracts and agreements with the Georgia Department of Transportation, county and local governments, and transit system operators for those purposes;

(4) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained air quality control installations, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction for such purposes pursuant to this chapter, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes; provided, however, that where such air quality control measures are included in an applicable implementation plan, they shall be approved by the Environmental Protection Division of the state Department of Natural Resources and by the United States Environmental Protection Agency where necessary to preserve their protected status during any conformity lapse;

(5) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, such contracts, leases, or instruments to include contracts for acquisition, construction, operation, management, or maintenance of projects and facilities owned by local government, the authority, or by the state or any political subdivision, department, agency, or authority thereof, and to include contracts relating to the execution of the powers of the authority and the disposal of the property of the authority from time to time; and any and all local governments, departments, institutions, authorities, or agencies of the state are authorized to enter into contracts, leases, agreements, or other instruments with the authority upon such terms and to transfer real and personal property to the authority for such consideration and for such purposes as they deem advisable;

(6) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the



authority, in compliance, where required, with applicable federal law including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. Section 4601, et seq., 23 C.F.R. Section 1.23, and 23 C.F.R. Section 713(c);

(7) To appoint an executive director who shall be executive officer and administrative head of the authority. The executive director shall be appointed and serve at the pleasure of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;

(8) To finance projects, facilities, and undertakings of the authority for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction by loan, loan guarantee, grant, lease, or otherwise, and to pay the cost of such from the proceeds of bonds, revenue bonds, notes, or other obligations of the authority or any other funds of the authority or from any contributions or loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the authority is authorized to receive, accept, and use;

(9) To extend credit or make loans or grants for all or part of the cost or expense of any project, facility, or undertaking of a political subdivision or other entity for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction upon such terms and conditions as the authority may deem necessary or desirable; and to adopt rules, regulations, and procedures for making such loans and grants;

(10) To borrow money to further or carry out its public purpose and to issue guaranteed revenue bonds, revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(11) To issue guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations of the authority, to receive payments from the Department of Community Affairs, and to use the proceeds thereof for the purpose of:

(A) Paying or loaning the proceeds thereof to pay, all or any part of, the cost of any project or the principal of and premium, if any,



and interest on the revenue bonds, bonds, notes, or other obligations of any local government issued for the purpose of paying in whole or in part the cost of any project and having a final maturity not exceeding three years from the date of original issuance thereof;

(B) Paying all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out the purposes of the authority; and

(C) Paying all costs of the authority incurred in connection with the issuance of the guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations;

(12) To collect fees and charges in connection with its loans, commitments, management services, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(13) Subject to any agreement with bond owners, to invest moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;



(E) Certificates of deposit of national or state banks or federal savings and loan associations located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of state building and loan associations located within the state which have deposits insured by any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys; and

(G) State operated investment pools;

(14) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation



by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(15) Subject to applicable covenants or agreements related to the issuance of bonds, to invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (13) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments, schedule for which such moneys are to be applied;

(16) To provide advisory, technical, consultative, training, educational, and project assistance services to the state and local government and to enter into contracts with the state and local government to provide such services. The state and local governments are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(17) To make loan commitments and loans to local governments and to enter into option arrangements with local governments for the purchase of said bonds, revenue bonds, notes, or other obligations;

(18) To sell or pledge any bonds, revenue bonds, notes, or other obligations acquired by it whenever it is determined by the authority that the sale thereof is desirable;

(19) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(20) To lease to local governments any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state;

(21) To contract with state agencies or any local government for the use by the authority of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of



the authority, and such state agencies and local governments are authorized to enter into such contracts;

(22) To extend credit or make loans, including the acquisition of bonds, revenue bonds, notes, or other obligations of the state, any local government, or other entity, including the federal government, for the cost or expense of any project or any part of the cost or expense of any project, which credit or loans may be evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, or assignments, on such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such trust indentures, loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project and such other terms and conditions as the authority may deem necessary or desirable;

(23) As security for repayment of any bonds, revenue bonds, notes, or other obligations of the authority, to pledge, lease, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority including, but not limited to, real property, fixtures, personal property, and revenues or other funds and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument;

(24) To receive and use the proceeds of any tax levied to pay all or any part of the cost of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(25) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine, including, but not limited to, the use of repaid principal and earnings on funds, the ultimate source of which was an appropriation to a budget unit of the state to make loans for projects;



(26) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations; with agencies of the federal government and this state and local government; with other states and their political subdivisions; and with joint agencies thereof, and such state agencies, local government, and joint agencies are authorized and empowered to cooperate and act in conjunction and to enter into contracts or agreements with the authority and local government to achieve or further the purposes of the authority;

(27) To coordinate, cooperate, and contract with any metropolitan planning organization for a standard metropolitan statistical area which is primarily located within an adjoining state but which includes any territory within the jurisdiction of the authority to achieve or further the purposes of the authority as provided by this chapter;

(28) To coordinate and assist in planning for land transportation and air quality purposes within the geographic area over which the authority has jurisdiction pursuant to this chapter, between and among all state, regional, and local authorities charged with planning responsibilities for such purposes by state or federal law, and to adopt a regional plan or plans based in whole or in part on such planning;

(29) Reserved;

(30) To review and make recommendations to the Governor concerning all land transportation plans and transportation improvement programs prepared by the Department of Transportation involving design, construction, or operation of land transportation facilities wholly or partly within the geographic area over which the authority has jurisdiction pursuant to this chapter, and to negotiate with that department concerning changes or amendments to such plans which may be recommended by the authority or the Governor consistent with applicable federal law and regulation, and to adopt such plans as all or a portion of its own regional plans;

(31) To acquire by the exercise of the power of eminent domain any real property or rights in property which it may deem necessary for its purposes under this chapter pursuant to the procedures set forth in this chapter, and to purchase, exchange, sell, lease, or otherwise acquire or dispose of any property or any rights or interests therein for the purposes authorized by this chapter or for any facilities or activities incident thereto, subject to and in conformity with applicable federal law and regulation;

(32) To the extent permissible under federal law, to operate as a receiver of federal grants, loans, and other moneys intended to be



used within the geographic area over which the authority has jurisdiction pursuant to this chapter for inter-urban and intra-urban transit, land public transportation development, air quality and air pollution control, and other purposes related to the alleviation of congestion and air pollution;

(33) Subject to any covenant or agreement made for the benefit of owners of bonds, notes, or other obligations issued to finance roads or toll roads, in planning for the use of any road or toll road which lies within the geographical area over which the authority has jurisdiction, the authority shall have the power to control or limit access thereto, including the power to close off, regulate, or create access to or from any part, excluding the interstate system, of any road on the state highway system, a county road system, or a municipal street system to or from any such road or toll road or any property or project of the authority, to the extent necessary to achieve the purposes of the authority; the authority may submit an application for an interstate system right of way encroachment through the state Department of Transportation, and that department shall submit the same to the Federal Highway Administration for approval. The authority shall provide any affected local government with not less than 60 days' notice of any proposed access limitation;

(34) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(35) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(36) To procure insurance against any loss in connection with its property and other assets or obligations or to establish cash reserves to enable it to act as self-insurer against any and all such losses;

(37) To accept and use federal funds; to enter into any contracts or agreements with the United States or its agencies or subdivisions relating to the planning, financing, construction, improvement, operation, and maintenance of any public road or other mode or system of land transportation; and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs. Nothing in this chapter is intended to conflict with any federal law; and, in case of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(38) To ensure that any project funded by the authority in whole or in part with federal-aid funds is included in approved transportation improvement programs adopted and approved by designated metropolitan planning organizations and the Governor and in the land



transportation plan adopted and approved by the designated metropolitan planning organization and is in compliance with the requirements of relevant portions of the regulations implementing the Clean Air Act including without limitation 40 C.F.R. Section 93.105(c)(1)(ii) and 40 C.F.R. Section 93.122(a)(1), where such inclusion, approval, designation, or compliance is required by applicable federal law or regulation; and

(39) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts and attorneys, and to fix their compensation.

(b) In addition to the above-enumerated general powers, and such other powers as are set forth in this chapter, the authority shall have the following powers with respect to special districts created and activated pursuant to this chapter:

(1) By resolution, to authorize the provision of land public transportation services and the institution of air quality control measures within the bounds of such special districts by local governments within such special districts utilizing the funding methods authorized by this chapter where the facilities for such purposes are located wholly within the jurisdiction of such local governments and such special districts or are the subject of contracts between or among such local governments and where such services and measures are certified by the authority to be consistent with the designated metropolitan planning organizations' regional plans, where applicable;

(2) By resolution, to authorize the utilization by local governments within such special districts of the funding mechanisms enumerated in Code Section 50-32-30 to provide funding to defray the cost of land public transportation and air quality control measures certified and provided pursuant to paragraph (1) of this subsection;

(3) By resolution, to authorize the utilization by local governments within such special districts of the above-enumerated funding mechanisms to assist in funding those portions of regional land public transportation systems which lie within and provide service to the territory of such local governments within special districts; and

(4) By resolution, to contract with local governments within such special districts for funding, planning services, and such other services as the authority may deem necessary and proper to assist such local governments in providing land public transportation services and instituting air quality control measures within the bounds of such special districts where the facilities for such purposes are located wholly within the jurisdiction of such local governments and such special districts or are the subject of contracts between or among such local governments, and where such services and mea-



asures are certified by the authority to be consistent with the designated metropolitan planning organizations’ regional plans, where applicable.

(c) The provision of local government services and the utilization of funding mechanisms therefor consistent with the terms of this chapter shall not be subject to the provisions of Chapter 70 of Title 36; provided, however, that the authority shall, where practicable, provide for coordination and consistency between the provision of such services pursuant to the terms of this chapter and the provision of such services pursuant to Chapter 70 of Title 36. (Code 1981, § 50-32-11, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2002, p. 415, § 50; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 976, § 13/SB 200; Ga. L. 2013, p. 141, § 50/HB 79; Ga. L. 2014, p. 866, § 50/SB 340.)

**The 2014 amendment**, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(26).

CHAPTER 34

ONEGEORGIA AUTHORITY

Sec.  
50-34-17. OneGeorgia Authority Overview Committee established; duties.

**50-34-17. OneGeorgia Authority Overview Committee established; duties.**

(a) There is established the OneGeorgia Authority Overview Committee to be composed of one member of the House of Representatives to be appointed by the Speaker of the House of Representatives, one member of the Senate to be appointed by the President of the Senate, the director of the Senate Budget and Evaluation Office or his or her designee, the director of the House Budget and Research Office or his or her designee, and two members of the General Assembly to be appointed by the Governor. The legislative members shall serve for terms as members of the committee concurrent with their terms of office as members of the General Assembly. The first members of the committee shall be appointed by not later than July 1, 2000. Thereafter, their successors shall be appointed during the first 30 days of each regular legislative session which is held immediately following the election of members of the General Assembly.

(b) The Speaker of the House of Representatives shall designate one of the members appointed by the Speaker as chairperson of the



committee. The President of the Senate shall designate one of the members appointed by the President of the Senate as vice chairperson of the committee. The members designated as chairperson and vice chairperson shall serve for terms as such officers concurrent with their terms as members of the committee. Other than the chairperson and vice chairperson provided for in this subsection, the committee shall provide for its own organization.

(c) The committee shall periodically inquire into and review the operations, contracts, safety, financing, organization, and structure of the OneGeorgia Authority, as well as periodically review and evaluate the success with which said authority is accomplishing its legislatively created purposes.

(d) The OneGeorgia Authority shall cooperate with the committee and its authorized personnel in order that the committee may efficiently and effectively carry out its duties. The OneGeorgia Authority shall submit to the committee such reports and data as the committee shall reasonably require of said authority in order that the committee may adequately inform itself of the activities of said authority. The committee shall, on or before the first day of January of each year and at such other times as it deems to be in the public interest, submit to the General Assembly a report of its findings and recommendations based upon the review of the operations of the OneGeorgia Authority.

(e) The members of the committee shall receive the same expenses and allowances for their services on the committee as are authorized by law for members of interim legislative study committees.

(f) Nothing in this Code section shall be construed to relieve the OneGeorgia Authority of the responsibilities imposed upon it under this chapter. (Code 1981, § 50-34-17, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2008, p. VO1, § 1-22/HB 529; Ga. L. 2014, p. 866, § 50/SB 340.)

**The 2014 amendment**, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, in subsection (a), substituted “Senate Budget and Eval-

uation Office” for “Senate Budget Office” and substituted “House Budget and Research Office” for “House Budget Office”.



**CHAPTER 36****VERIFICATION OF LAWFUL PRESENCE WITHIN  
UNITED STATES****50-36-1. Verification requirements, procedures, and conditions;  
exceptions; regulations; criminal and other penalties  
for violations.**

**Law reviews.** — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

**50-36-2. Secure and verifiable identity document; applicability.**

**Law reviews.** — For article on the 2013 amendment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013).

**50-36-3. Immigration Enforcement Review Board; membership;  
duties; sanctions; civil actions.****OPINIONS OF THE ATTORNEY GENERAL**

**No statutory time frames for hearings.** — While the Immigration Enforcement Review Board should act with due diligence and hold hearings within a reasonable period of time from the date that a complaint is received by the Board, there are no statutory time frames under O.C.G.A. § 50-36-3 within which the Board must conduct a hearing on a com-

plaint received by the Board. Furthermore, the Board's administrative interpretation that the statutory time frame within O.C.G.A. § 50-36-3(g) refers to the date between the conclusion of the hearing and the issuance of the initial decision is the correct interpretation of O.C.G.A. § 50-36-3. 2013 Op. Att'y Gen. No. 13-1.

**50-36-4. Definitions; requiring agencies to submit annual immigration compliance reports.**

**Law reviews.** — For article on the 2013 enactment of this Code section, see 30 Ga. St. U.L. Rev. 173 (2013)



CHAPTER 38

COMPACT FOR A BALANCED BUDGET

Sec.  
50-38-1. Compact enacted and entered into; provisions of compact.

**Effective date.** — This chapter became effective April 12, 2014.  
**Code Commission notes.** — In 2014, the Georgia General Assembly passed HB 794 and SB 206, both relating to Article V Conventions. HB 794, codified at § 50-38-1, was signed by the Governor on April 12, 2014 (Act No. 475, Ga. L. 2014, p. 20/HB 794). SB 206, codified at § 28-6-8, was signed by the Governor on April 29, 2014 (Act. No. 641, Ga. L. 2014, p. 815, § 1/SB 206). The Code Revision Commission on May 15, 2014, directed that both

Acts be published, although the effect of codifying both is unclear.  
**Editor’s notes.** — Ga. L. 2014, p. 20, § 1/HB 794, effective April 12, 2014, enacted this chapter, the Compact for a Balanced Budget. Pursuant to Sec. 7 of Art. X of the Compact, the Compact shall terminate upon the passage of a Balanced Budget Amendment to the United States Constitution, or after seven years. As of July 1, 2015, there had been no such amendment to the United States Constitution.

50-38-1. Compact enacted and entered into; provisions of compact.

The State of Georgia enacts, adopts, and agrees to be bound by the following compact:

“ARTICLE I

DECLARATION OF POLICY, PURPOSE, AND INTENT

Whereas, every State enacting, adopting, and agreeing to be bound by this Compact intends to ensure that their respective legislature’s use of the power to originate a Balanced Budget Amendment under Article V of the Constitution of the United States will be exercised conveniently and with reasonable certainty as to the consequences thereof.

Now, therefore, in consideration of their expressed mutual promises and obligations, be it enacted by every State enacting, adopting, and agreeing to be bound by this Compact, and resolved by each of their respective legislatures, as the case may be, to exercise herewith all of their respective powers as set forth herein notwithstanding any law to the contrary.

ARTICLE II

DEFINITIONS

Section 1. ‘Compact’ means this ‘Compact for a Balanced Budget.’



Section 2. 'Convention' means the convention for proposing amendments organized by this Compact under Article V of the Constitution of the United States and, where contextually appropriate to ensure the terms of this Compact are not evaded, any other similar gathering or body, which might be organized as a consequence of Congress receiving the application set out in this Compact and claim authority to propose or effectuate any amendment, alteration or revision to the Constitution of the United States. This term is not intended to pertain to any convention held under Article V of the Constitution of the United States which originates as a result of a separate and distinct application by any State.

Section 3. 'State' means one of the several states of the United States. Where contextually appropriate, the term 'State' shall be construed to include all of its branches, departments, agencies, political subdivisions, and officers and representatives acting in their official capacity.

Section 4. 'Member State' means a State that has enacted, adopted, and agreed to be bound to this Compact. For any State to qualify as a Member State with respect to any other State under this Compact, each such State must have enacted, adopted, and agreed to be bound by substantively identical compact legislation.

Section 5. 'Compact Notice Recipients' means the Archivist of the United States, the President of the United States, the President of the United States Senate, the Office of the Secretary of the United States Senate, the Speaker of the United States House of Representatives, the Office of the Clerk of the United States House of Representatives, the chief executive officer of each State, and the presiding officer(s) of each house of the Legislatures of the several States.

Section 6. Notice. All notices required by this Compact shall be by U.S. Certified Mail, return receipt requested, or an equivalent or superior form of notice, such as personal delivery documented by evidence of actual receipt.

Section 7. 'Balanced Budget Amendment' means the following:

#### ARTICLE —

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first



approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered, or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty (60) calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective thirty (30) days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6. For purposes of this article, 'debt' means any obligation backed by the full faith and credit of the government of the United States; 'outstanding debt' means all debt held in any account and by any entity at a given point in time; 'authorized debt' means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; 'total receipts of the government of the United States' means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; 'impoundment'



means a proposal not to spend all or part of a sum of money appropriated by Congress; and ‘general revenue tax’ means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

Section 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

### ARTICLE III

#### COMPACT MEMBERSHIP AND WITHDRAWAL

Section 1. This Compact governs each Member State to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting or contrary law.

Section 2. By becoming a Member State, each such State offers, promises and agrees to perform and comply strictly in accordance with the terms and conditions of this Compact, and has made such offer, promise, and agreement in anticipation and consideration of, and in substantial reliance upon, such mutual and reciprocal performance and compliance by each other current and future Member State, if any. Accordingly, in addition to having the force of law in each Member State upon its respective effective date, this Compact and each of its Articles shall also be construed as contractually binding each Member State when: (a) at least one other State has likewise become a Member State by enacting substantively identical legislation adopting and agreeing to be bound by this Compact; and (b) notice of such State’s Member State status is or has been seasonably received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State.

Section 3. For purposes of determining Member State status under this Compact, as long as all other provisions of the Compact remain identical and operative on the same terms, legislation enacting, adopting and agreeing to be bound by this Compact shall be deemed and regarded as ‘substantively identical’ with respect to such other legislation enacted by another State notwithstanding: (a) any difference in section 2 of Article IV with specific regard to the respectively enacting State’s own method of appointing its member to the Commission; (b) any difference in section 5 of Article IV with specific regard to the respectively enacting State’s own obligation to fund the Commission; (c) any difference in sections 1 and 2 of Article VI with specific regard to the number and identity of each delegate respectively appointed on behalf of the enacting State, provided that no more than three delegates may attend and participate in the Convention on behalf of any State; or (d) any difference in section 7 of Article X with specific regard to the respectively enacting State as to whether section 1 of Article V of this



Compact shall survive termination of the Compact, and thereafter become a continuing resolution of the Legislature of such State applying to Congress for the calling of a convention of the states under Article V of the Constitution of the United States, under such terms and limitations as may be specified by such State.

Section 4. When fewer than three-fourths of the States are Member States, any Member State may withdraw from this Compact by enacting appropriate legislation, as determined by state law, and giving notice of such withdrawal to the Compact Administrator, if any, or otherwise to the chief executive officer of each other Member State. A withdrawal shall not affect the validity or applicability of the compact with respect to remaining Member States, provided that there remain at least two such States. However, once at least three-fourths of the States are Member States, then no Member State may withdraw from the Compact prior to its termination absent unanimous consent of all Member States.

## ARTICLE IV

### COMPACT COMMISSION AND COMPACT ADMINISTRATOR

Section 1. Nature of the Compact Commission. The Compact Commission ('Commission') is hereby established. It has the power and duty: (a) to appoint and oversee a Compact Administrator; (b) to encourage States to join the Compact and Congress to call the Convention in accordance with this Compact; (c) to coordinate the performance of obligations under the Compact; (d) to oversee the Convention's logistical operations, as appropriate to ensure this Compact governs its proceedings; (e) to oversee the defense and enforcement of the Compact in appropriate legal venues; (f) to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and Convention; and (g) to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation, or lobbying in support of the purposes of the Compact. The Commission shall only have such implied powers as are essential to carrying out these express powers and duties. It shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. It may adopt and publish corresponding bylaws and policies.

Section 2. Commission Membership. The Commission initially consists of three unpaid members. Each Member State may appoint one member to the Commission through an appointment process to be determined by their respective chief executive officer until all positions on the Commission are filled. Positions shall be assigned to appointees in the order in which their respective appointing States became Member States. The bylaws of the Commission may expand its mem-



bership to include representatives of additional Member States and to allow for modest salaries and reimbursement of expenses if adequate funding exists.

Section 3. Commission Action. Each Commission member is entitled to one vote. The Commission shall not act unless a majority of its appointed membership is present, and no action shall be binding unless approved by a majority of the Commission's appointed membership. The Commission shall meet at least once a year, and may meet more frequently.

Section 4. First Order of Business. The Commission shall at the earliest possible time elect from among its membership a Chairperson, determine a primary place of doing business, and appoint a Compact Administrator.

Section 5. Funding. The Commission and the Compact Administrator's activities shall be funded exclusively by each Member State, as determined by their respective state law, or by voluntary donations.

Section 6. Compact Administrator. The Compact Administrator has the power and duty: (a) to timely notify the States of the date, time, and location of the Convention; (b) to organize and direct the logistical operations of the Convention; (c) to maintain an accurate list of all Member States, their appointed delegates, including contact information; and (d) to formulate, transmit, and maintain all official notices, records, and communications relating to this Compact. The Compact Administrator shall only have such implied powers as are essential to carrying out these express powers and duties; and shall take no action that contravenes or is inconsistent with this Compact or any law of any State that is not superseded by this Compact. The Compact Administrator serves at the pleasure of the Commission and must keep the Commission seasonably apprised of the performance or nonperformance of the terms and conditions of this Compact. Any notice sent by a Member State to the Compact Administrator concerning this Compact shall be adequate notice to each other Member State provided that a copy of said notice is seasonably delivered by the Compact Administrator to each other Member State's respective chief executive officer.

Section 7. Notice of Key Events. Upon the occurrence of each of the following described events, or otherwise as soon as possible, the Compact Administrator shall immediately send the following notices to all Compact Notice Recipients, together with certified conforming copies of the chaptered version of this Compact as maintained in the statutes of each Member State: (a) whenever any State becomes a Member State, notice of that fact shall be given; (b) once at least three-fourths of the States are Member States, notice of that fact shall be given together with a statement declaring that the legislatures of at



least two-thirds of the several states have applied for a convention for proposing amendments under Article V of the Constitution of the United States, petitioning Congress to call the Convention contemplated by this Compact, and further requesting cooperation in organizing the same in accordance with this Compact; (c) once Congress has called the Convention contemplated by this Compact, and whenever the date, time, and location of the Convention has been determined, notice of that fact shall be given together with the date, time, and location of the Convention and other essential logistical matters; (d) upon approval of the Balanced Budget Amendment by the Convention, notice of that fact shall be given together with the transmission of certified copies of such approved proposed amendment and a statement requesting Congress to refer the same for ratification by three-fourths of the legislatures of the several states under Article V of the Constitution of the United States (however, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted); and (e) when any Article of this Compact prospectively ratifying the Balanced Budget Amendment is effective in any Member State, notice of the same shall be given together with a statement declaring such ratification and further requesting cooperation in ensuring that the official record confirms and reflects the effective corresponding amendment to the Constitution of the United States. However, whenever any Member State enacts appropriate legislation, as determined by the laws of the respective state, withdrawing from this Compact, the Compact Administrator shall immediately send certified conforming copies of the chaptered version of such withdrawal legislation as maintained in the statutes of each such withdrawing Member State, solely to each chief executive officer of each remaining Member State, giving notice of such withdrawal.

Section 8. Cooperation. The Commission, Member States, and Compact Administrator shall cooperate with each other and give each other mutual assistance in enforcing this Compact and shall give the chief law enforcement officer of each other Member State any information or documents that are reasonably necessary to facilitate the enforcement of this Compact.

Section 9. This Article does not take effect until there are at least two Member States.

## ARTICLE V

### RESOLUTION APPLYING FOR CONVENTION

Section 1. Be it resolved, as provided for in Article V of the Constitution of the United States, the Legislature of each Member State herewith applies to Congress for the calling of a convention for proposing amendments limited to the subject matter of proposing for ratification the Balanced Budget Amendment.



Section 2. Congress is further petitioned to refer the Balanced Budget Amendment to the States for ratification by three-fourths of their respective Legislatures.

Section 3. This Article does not take effect until at least three-fourths of the several States are Member States.

## ARTICLE VI

### DELEGATE APPOINTMENT, LIMITATIONS, AND INSTRUCTIONS

Section 1. Number of Delegates. This Member State shall be entitled to three delegates to represent its sovereign interests at the Convention.

Section 2. Identity. The Governor, Speaker of the House of Representatives, and President Pro Tempore of the Senate of this Member State, or their respective designee, as identified in a sworn affidavit executed by such officer, are each appointed in an individual capacity to represent this Member State at the Convention as its sole and exclusive delegates. A majority vote of this delegation shall serve to decide any issue at the Convention on behalf of this Member State.

Section 3. Replacement or Recall of Delegates. A delegate appointed hereunder may be replaced or recalled by the legislature of his or her respective state at any time for good cause, such as criminal misconduct or the violation of this Compact. If replaced or recalled, any delegate previously appointed hereunder must immediately vacate the Convention and return to their respective State's capitol.

Section 4. Oath. The power and authority of a delegate under this Article may only be exercised after the Convention is first called by Congress in accordance with this Compact and such appointment is duly accepted by such appointee publicly taking the following oath or affirmation: 'I do solemnly swear (or affirm) that I accept this appointment and will act strictly in accordance with the terms and conditions of the Compact for a Balanced Budget, the Constitution of the State I represent, and the Constitution of the United States. I understand that violating this oath (or affirmation) forfeits my appointment and may subject me to other penalties as provided by law.'

Section 5. Term. The term of a delegate hereunder commences upon acceptance of appointment and terminates upon the permanent adjournment of the Convention, unless shortened by recall, replacement, or forfeiture under this Article. Upon expiration of such term, any person formerly serving as a delegate must immediately withdraw from and cease participation at the Convention, if any is proceeding.

Section 6. Delegate Authority. The power and authority of any delegate appointed hereunder is strictly limited: (a) to introducing,



debating, voting upon, proposing, and enforcing the Convention Rules specified in this Compact, as needed to ensure those rules govern the Convention; and (b) to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment. All actions taken by any delegate in violation of this section are void ab initio.

Section 7. Delegate Authority. No delegate of any Member State may introduce, debate, vote upon, reject, or propose for ratification any constitutional amendment at the Convention unless: (a) the Convention Rules specified in this Compact govern the Convention and their actions; and (b) the constitutional amendment is the Balanced Budget Amendment.

Section 8. Delegate Authority. The power and authority of any delegate at the Convention does not include any power or authority associated with any other public office held by the delegate. Any person appointed to serve as a delegate shall take a temporary leave of absence from any other public office held by the delegate while attending the Convention, and may not exercise any power or authority associated with any other public office held by the delegate while attending the Convention. All actions taken by any delegate in violation of this section are void ab initio.

Section 9. Order of Business. Before introducing, debating, voting upon, rejecting, or proposing for ratification any constitutional amendment at the Convention, each delegate of every Member State must first ensure the Convention Rules in this Compact govern the Convention and their actions. Every delegate and each Member State must immediately vacate the Convention and notify the Compact Administrator by the most effective and expeditious means if the Convention Rules in this Compact are not adopted to govern the Convention and their actions.

Section 10. Forfeiture of Appointment. If any Member State or delegate violates any provision of this Compact, then every delegate of that Member State immediately forfeits his or her appointment, and shall immediately cease participation at the Convention, vacate the Convention, and return to his or her respective State's capitol.

Section 11. Expenses. A delegate appointed hereunder is entitled to reimbursement of reasonable expenses for attending the Convention from his or her respective Member State. No delegate may accept any other form of remuneration or compensation for service under this Compact.



## ARTICLE VII

## CONVENTION RULES

Section 1. Nature of the Convention. The Convention shall be organized, construed, and conducted as a body exclusively representing and constituted by the several States.

Section 2. Agenda of the Convention. The agenda of the Convention shall be entirely focused upon and exclusively limited to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment under the Convention Rules specified in this Article and in accordance with the Compact. It shall not be in order for the Convention to consider any matter that is outside the scope of this agenda.

Section 3. Delegate Identity and Procedure. States shall be represented at the Convention through duly appointed delegates. The number, identity, and authority of delegates assigned to each State shall be determined by this Compact in the case of Member States or, in the case of states that are not Member States, by their respective state laws. However, to prevent disruption of proceedings, no more than three delegates may attend and participate in the Convention on behalf of any State. A certified chaptered conforming copy of this Compact, together with government-issued photographic proof of identification, shall suffice as credentials for delegates of Member States. Any commission for delegates of states that are not Member States shall be based on their respective state laws, but it shall furnish credentials that are at least as reliable as those required of Member States.

Section 4. Voting. Each state represented at the Convention shall have one vote, exercised by the vote of that State's delegate in the case of states represented by one delegate, or, in the case of any State that is represented by more than one delegate, by the majority vote of that state's respective delegates.

Section 5. Quorum. A majority of the several states of the United States, each present through its respective delegate in the case of any State that is represented by one delegate, or through a majority of its respective delegates, in the case of any state that is represented by more than one delegate, shall constitute a quorum for the transaction of any business on behalf of the Convention.

Section 6. Action by the Convention. The Convention shall only act as a committee of the whole chaired by the delegate representing the first state to have become a Member State, if that state is represented by one delegate, or otherwise by the delegate chosen by the majority vote of that state's respective delegates. The transaction of any business on behalf of the Convention, including the designation of a secretary, the



adoption of parliamentary procedures, and the rejection or proposal of any constitutional amendments, requires a quorum to be present and a majority affirmative vote of those states constituting the quorum.

Section 7. Emergency Suspension and Relocation of the Convention. In the event that the Chair of the Convention declares an emergency due to disorder or an imminent threat to public health and safety prior to the completion of the business on the Agenda, and a majority of the States present at the Convention do not object to such declaration, further Convention proceedings shall be temporarily suspended, and the Commission shall subsequently relocate or reschedule the Convention to resume proceedings in an orderly fashion in accordance with the terms and conditions of this Compact with prior notice given to the Compact Notice Recipients.

Section 8. Parliamentary Procedure. In adopting, applying, and formulating parliamentary procedure, the Convention shall exclusively adopt, apply, or appropriately adapt provisions of the most recent editions of Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure. In adopting, applying, or adapting parliamentary procedure, the Convention shall exclusively consider analogous precedent arising within the jurisdiction of the United States. Parliamentary procedures adopted, applied, or adapted pursuant to this section shall not obstruct, override, or otherwise conflict with this Compact.

Section 9. Transmittal. Upon approval of the Balanced Budget Amendment by the Convention to propose for ratification, the chair of the Convention shall immediately transmit certified copies of such approved proposed amendment to the Compact Administrator and all Compact Notice Recipients, notifying them respectively of such approval and requesting Congress to refer the same for ratification by the States under Article V of the Constitution of the United States. However, in no event shall any proposed amendment other than the Balanced Budget Amendment be transmitted as aforesaid.

Section 10. Transparency. Records of the Convention, including the identities of all attendees and detailed minutes of all proceedings, shall be kept by the chair of the Convention or secretary designated by the Convention. All proceedings and records of the Convention shall be open to the public upon request subject to reasonable regulations adopted by the Convention that are closely tailored to preventing disruption of proceedings under this Article.

Section 11. Adjournment of the Convention. The Convention shall permanently adjourn upon the earlier of twenty-four (24) hours after commencing proceedings under this Article or the completion of the business on its Agenda.



## ARTICLE VIII

## PROHIBITION ON ULTRA VIRES CONVENTION

Section 1. Member States shall not participate in the Convention unless: (a) Congress first calls the Convention in accordance with this Compact; and (b) the Convention Rules of this Compact are adopted by the Convention as its first order of business.

Section 2. Any proposal or action of the Convention is void ab initio and issued by a body that is conducting itself in an unlawful and ultra vires fashion if that proposal or action: (a) violates or was approved in violation of the Convention Rules or the delegate instructions and limitations on delegate authority specified in this Compact; (b) purports to propose or effectuate a mode of ratification that is not specified in Article V of the Constitution of the United States; or (c) purports to propose or effectuate the formation of a new government. All Member States are prohibited from advancing or assisting in the advancement of any such proposal or action.

Section 3. Member States shall not ratify or otherwise approve any proposed amendment, alteration, or revision to the Constitution of the United States, which originates from the Convention, other than the Balanced Budget Amendment.

## ARTICLE IX

RESOLUTION PROSPECTIVELY RATIFYING THE  
BALANCED BUDGET AMENDMENT

Section 1. Each Member State, by and through its respective legislature, hereby adopts and ratifies the Balanced Budget Amendment.

Section 2. This Article does not take effect until Congress effectively refers the Balanced Budget Amendment to the states for ratification by three-fourths of the legislatures of the several states under Article V of the Constitution of the United States.

## ARTICLE X

CONSTRUCTION, ENFORCEMENT, VENUE, AND  
SEVERABILITY

Section 1. To the extent that the effectiveness of this Compact or any of its Articles or provisions requires the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting, and agreeing to be bound by this Compact shall be deemed to waive, repeal, supersede, or otherwise amend and conform all such rules, policies, or procedures to allow for the effectiveness of this Compact to the fullest extent permitted by the constitution of any affected Member State.



Section 2. Date and Location of the Convention. Unless otherwise specified by Congress in its call, the Convention shall be held in Dallas, Texas and commence proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the latter of the effective date of Article V of this Compact or the enactment date of the Congressional resolution calling the Convention.

Section 3. In addition to all other powers and duties conferred by state law which are consistent with the terms and conditions of this Compact, the chief law enforcement officer of each Member State is empowered to defend the Compact from any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief to enforce this Compact; and shall take such action whenever the Compact is challenged or violated.

Section 4. The exclusive venue for all actions in any way arising under this Compact shall be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of the foregoing district court. Each Member State shall submit to the jurisdiction of said courts with respect to such actions. However, upon written request by the chief law enforcement officer of any Member State, the Commission may elect to waive this provision for the purpose of ensuring an action proceeds in the venue that allows for the most convenient and effective enforcement or defense of this Compact. Any such waiver shall be limited to the particular action to which it is applied and not construed or relied upon as a general waiver of this provision. The waiver decisions of the Commission under this provision shall be final and binding on each Member State.

Section 5. The effective date of this Compact and any of its Articles is the latter of: (a) the date of any event rendering the same effective according to its respective terms and conditions; or (b) the earliest date otherwise permitted by law.

Section 6. Article VIII of this Compact is hereby deemed non-severable prior to termination of the Compact. However, if any other phrase, clause, sentence, or provision of this Compact, or the applicability of any other phrase, clause, sentence, or provision of this Compact to any government, agency, person, or circumstance, is declared in a final judgment to be contrary to the Constitution of the United States, contrary to the state constitution of any Member State, or is otherwise held invalid by a court of competent jurisdiction, such phrase, clause, sentence, or provision shall be severed and held for naught, and the validity of the remainder of this Compact and the applicability of the remainder of this Compact to any government, agency, person, or circumstance shall not be affected. Furthermore, if this Compact is declared in a final judgment by a court of competent



jurisdiction to be entirely contrary to the state constitution of any Member State or otherwise entirely invalid as to any Member State, such Member State shall be deemed to have withdrawn from the Compact, and the Compact shall remain in full force and effect as to any remaining Member State. Finally, if this Compact is declared in a final judgment by a court of competent jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the Constitution of the United States, then it shall be construed and enforced solely as reciprocal legislation enacted by the affected Member State(s).

Section 7. Termination. This Compact shall terminate and be held for naught when it is fully performed and the Constitution of the United States is amended by the Balanced Budget Amendment. However, notwithstanding anything to the contrary set forth in this Compact, in the event such amendment does not occur within seven (7) years after the first State passes legislation enacting, adopting, and agreeing to be bound to this Compact, the Compact shall terminate as follows: (a) the Commission shall dissolve and wind up its operations within ninety (90) days thereafter, with the Compact Administrator giving notice of such dissolution and the operative effect of this section to the Compact Notice Recipients; (b) upon the completed dissolution of the Commission, Articles I, II, III, IV, VI, VII, VIII, and IX, as well as sections 2 and 3 of Article V and sections 1 through 6 of Article X, of this Compact for this Member State shall be deemed terminated, repealed, and held for naught; and (c) section 1 of Article V of this Compact, together with the constructional rule of this subsection, both of which shall survive termination of the Compact, shall thereafter become and be construed as an immediately effective freestanding continuing resolution, passed by the Legislature of this Member State, applying to Congress for the calling of a convention for proposing amendments under Article V of the Constitution of the United States, limited to proposing amendments such as a balanced budget amendment, which shall be capable of aggregation with any other similar application.” (Code 1981, § 50-38-1, enacted by Ga. L. 2014, p. 20, § 1/HB 794.)







